TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 658.

WARREN B. WHEELER, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

No. 659.

STILLMAN SHAW, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED MAY 29, 1912.

(23,224 and 23,225)

(23,224 and 23,225)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 658.

WARREN B. WHEELER, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

No. 659.

STILLMAN SHAW, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

INDEX.

	Original	Print
Writ of error—United States *vs.* Wheeler (No. 340)	1	1
Return on writ of error	2	1
Court and title of cause	3	2
Petition for attachment for contempt	3	2
Subpœna	5	3
Officer's return on subpœna	6	4
Questions and answers	7	4
Statement of facts to jury by Warren B. Wheeler	8	5
Motion of Warren B. Wheeler to dismiss the petition for attachment for contempt against him	9	6
Answer of Warren B. Wheeler to petition for attachment for contempt	11	8

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 1, 1912.

	Original	Print
Final order, April 18, 1912	12	9
Findings of fact	14	10
Defendant's bill of exceptions	15	11
Petition for writ of error	17	12
Assignment of errors	17	13
Bond on writ of error	19	14
Citation on writ of error	20	15
Acknowledgment of service on citation on writ of error	21	15
Writ of error—United States *vs.* Shaw (No. 341)	21*a*	15
Return on writ of error	22	17
Court and title of cause	23	17
Petition for attachment for contempt	23	17
Subpœna	24	18
Questions and answers	24	18
Statement of facts to jury by Stillman Shaw	25	19
Motion of Stillman Shaw to dismiss the petition for attachment for contempt against him	26	19
Answer of Stillman Shaw to petition for attachment for contempt	26	20
Final order, April 18, 1912	26	20
Findings of fact	28	21
Defendant's bill of exceptions	28	21
Petition for writ of error	28	22
Assignment of errors	29	22
Bond on writ of error	30	23
Citation on writ of error	31	24
Acknowledgment of service on citation on writ of error	32	24
Stipulation of counsel as to record	33	25
Clerk's certificate to records	34	25

1 *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

[Seal of the District Court, Massachusetts.]

The President of the United States to the Honorable the Judge of the District Court of the United States for the District of Massachusetts, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between the United States of America, petitioner, and Warren B. Wheeler, defendant, a manifest error hath happened, to the great damage of the said defendant as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, D. C. on the* twenty second day of May next, in the said Supreme Court, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty fifth day of April, in the year of our Lord one thousand nine hundred and twelve.

CHARLES K. DARLING,
Clerk of the District Court of the United States,
District of Massachusetts.

Allowed by
FREDERIC DODGE,
U. S. District Judge.

*Not exceeding 30 days from the day of signing the citation. Rule 14, Sec. 5.

2 *Return of District Court on Writ of Error.*

DISTRICT COURT OF THE UNITED STATES,
District of Massachusetts, ss:

And now, here, the Judge of the District Court of the United States, in and for the District of Massachusetts, make return of this writ by annexing hereto and sending herewith, under the seal of the said District Court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concern-

ing the same, to the Supreme Court of the United States as within commanded.

In testimony whereof, I Charles K. Darling, Clerk of said District Court of the United States, in and for the District of Massachusetts, have hereto set my hand and the seal of said Court this fifteenth day of May, A. D. 1912.

[Seal of the District Court, Massachusetts.]

CHARLES K. DARLING, *Clerk.*

3 *Transcript of Record of District Court.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

At a District Court of the United States begun and holden at Boston, within and for the District of Massachusetts, on the third Tuesday of March, being the nineteenth day of March, in the year of our Lord one thousand nine hundred and twelve.

Before the Honorable Clarence Hale, District Judge.

No. 340. Equity Docket.

UNITED STATES OF AMERICA, Petitioner,
v.
WARREN B. WHEELER, Defendant.

The Petition for Attachment for Contempt in this cause is filed in the clerk's office on the thirteenth day of April, A. D. 1912, and is duly entered at the present March Term of this Court, A. D. 1912, and is in the words and figures following:

Petition for Attachment for Contempt.

(Filed April 13, 1912.)

To the Honorable Frederic Dodge, Judge of the District Court of the United States for the District of Massachusetts:

The Grand Jurors for the District of Massachusetts, duly summoned, impanelled and sworn to inquire at the March Term of the District Court of the United States into any offences committed against the laws of the United States within and for said District of Massachusetts, complain and inform your Honor that a subpœna was duly issued out of this Court to Wheeler and Shaw, Incorporated, a corporation, on the twelfth day of April, A. D. 1912, returnable forthwith, and service of a copy thereof duly made upon one Warren B. Wheeler, Treasurer of said corporation, commanding said corporation to produce forthwith before said Grand

4 Jury certain books, copies of letters and telegrams, as appear by a copy of said subpœna and of the officer's return

thereon, hereto annexed; that on the afternoon of said twelfth day of April, the said Warren B. Wheeler appeared before said Grand Jury in response to said subpœna, and upon being asked by the United States Attorney whether he would produce the books, copies of letters and telegrams called for by said subpœna, stated that he did not have them, and upon being asked the direct question whether he had the books in his possession, declined to answer. He also declined to answer the question whether he would produce said books then, or within a reasonable time thereafter.

And the Grand Jurors say that the production before them of said books, copies of letters and telegrams mentioned in said subpœna is, in their opinion, necessary to the investigation of an alleged offence committed in said District of Massachusetts by said Warren B. Wheeler and one Stillman Shaw. The questions put to said Wheeler and the answers given by him, together with a written statement read to the jury by said Wheeler are hereto annexed.

Wherefore said Grand Jurors pray that said Warren B. Wheeler be ordered by this Honorable Court to produce said books, copies of lettes and telegrams, and that upon a failure or refusal of said Wheeler to comply with said order, that he be adjudged in contempt and further dealt with as this Honorable Court may direct.

GEO. WILLARD MARTIN.
Foreman of the Grand Jury.

5 (D. C. Form 141.)

(Copy.)

UNITED STATES OF AMERICA,
Massachusetts District, ss:

[L. S.]

The President of the United States of America to the Marshal of the District of Massachusetts or either of his Deputies, Greeting:

You are hereby required to summon Wheeler & Shaw, Incorporated, a corporation doing business at Boston in said District, if it may be found in your District, to appear before the Judge of our District Court of the United States, to be holden at Boston, within and for the District of Massachusetts, forthwith and not depart the said Court without leave of the Court or District Attorney first had and obtained; and warn said corporation to produce at the time and place aforesaid all cash books, ledgers, journals and other books of account of said Wheeler and Shaw, Incorporated, for and covering the period between October 1, 1909 and January 1, 1911; all copies of letters and telegrams of Wheeler and Shaw, Incorporated, signed or purporting to be signed by said Wheeler and Shaw, Incorporated, or by its President or its Treasurer in behalf of said Wheeler and Shaw, Incorporated, during the months of October, November and December, 1909, and the entire year of 1910; all the aforesaid books, copies of letters and telegrams to be produced

before the Grand Jurors of said District Court in the matter of an alleged violation of the laws of the United States by Warren B. Wheeler and Stillman Shaw; that for default and non-appearance it will have to abide the pains and penalties of the law in that behalf made and provided.

Hereof fail not, and make due return of this writ with your doings thereon, unto our said Court, as soon after the service thereof as may be.

Witness, the Honorable Frederic Dodge at Boston aforesaid, the 12th day of April in the year of our Lord one thousand nine hundred and twelve.

MARY E. PRENDERGAST,
Deputy Clerk.

PEYTON GORDON,
Special Assistant to the Attorney General,
Assistant U. S. Attorney.

6 UNITED STATES OF AMERICA,
Massachusetts District, ss:

BOSTON, *April 12th*, 1912.

Pursuant hereunto, I have this day summoned the within named Wheeler & Shaw, Incorporated to appear at Court as within required, by giving in hand to Warren B. Wheeler treasurer of defendant corporation at Boston in said District A true and attested copy of this subpœna together with a memorandum in writing attached to subpœna, directing him to bring with him the things named in this subpœna.

GUY MURCHIE, *U. S. Marshal.*
By JAMES A. TIGHE, *Deputy.*

7 *Mr. Warren B. Wheeler.*

Q. Your name is Warren B. Wheeler?

A. Yes sir.

Q. You have come here in response to a subpœna served upon you?

A. Yes sir.

Q. Will you produce the books and papers which are called for in that subpœna?

A. I would like to be sworn to explain why I have not produced them.

Q. The question I ask you is simply whether you will produce them?

A. I have not them.

Q. Have you the books in your possession?

A. I decline to answer.

Q. Will you produce them either now or within a reasonable time hereafter?

A. I decline to answer.

Q. Will you state your reasons for declining to answer the question?

A. Yes sir. I have a paper which I will read myself or hand it to you to read.

Q. You may read it.

(Witness reads statement.)

Q. Are you willing to leave this statement with the clerk of the Grand Jury?

A. Yes sir.

(The minutes were left with the Clerk.)

Q. Do I understand you correctly when you say that the books are in your possession, but that they are your private property?

A. No sir.

Q. I thought you said that the books and papers were your own personal property?

A. Yes sir.

Q. May I ask you this question: Do you mean that you have in your possession books which were formerly the books &c. of Wheeler & Shaw, Incorporated?

A. I decline to answer.

I hereby certify that the above is a correct transcript of the questions and answers propounded to the above Warren B. Wheeler before the Grand Jury this 12th day of April, 1912 and a copy of statement referred to annexed.

FRANKLIN M. ERLANBACH,
Clerk of Grand Jury.

8 To the Grand Jurors of the District Court of the United States for the District of Massachusetts.

GENTLEMEN: There was served upon me at 12.50 P. M. today, April 12, 1912, a subpœna addressed to Wheeler & Shaw, Inc., a corporation doing business at Boston, in said District, and calling upon that corporation to produce before you, presumably through me,

"all cash books, ledgers, journals, and other books of account of said Wheeler & Shaw, Inc., for and covering the period between October 1, 1909, and January 1, 1911, all copies of letters and telegrams of Wheeler & Shaw, Inc., signed or purporting to be signed by said Wheeler & Shaw, Inc., or by its president or its treasurer in behalf of said Wheeler & Shaw, Inc., during the months of October, November, and December, 1909, and the entire year of 1910; all the aforesaid books, copies of letters, and telegrams to be produced before the Grand Jurors of said District Court in the matter of an alleged violation of the laws of the United States by Warren B. Wheeler and Stillman Shaw."

I desire to avail myself of what I understand to be my right to state to you under oath my reasons for not producing any books, ledgers, or other papers or documents in response to said summons. My reasons are:

First. That I have not in my possession or custody any cash books, ledgers, journals, or any of the other books or things described

in said subpœna which belong to Wheeler & Shaw, Inc., or are in my possession as an officer or agent of Wheeler & Shaw, Inc. The only cash books, ledgers, journals, and other books, papers, and things to which the aforesaid description in said subpœna could apply are the personal property of myself and Stillman Shaw, and are in our personal possession, and are not in the possession of either of us as officers or agents of any corporation.

Second. Even were the facts not as stated above, I am advised that the language of said subpœna quoted above is so broad, sweeping, and lacking in particularity as to constitute a violation of the rights of any party to whom a subpœna is addressed to be exempt from unreasonable searches and seizures under the fourth amendment to the United States Constitution.

Third. Whether addressed to said corporation or to me personally, I am advised that said subpœna violates the rights secured to me by the fifth amendment to the Constitution of the United States not — be a witness against myself in any criminal case.

I make this statement in good faith, and not intending
9 any disrespect to the Grand Jury, or to the officers of the Government, and I venture to remind the Grand Jury that I am entitled under the laws of the United States not to have any inferences drawn against me by reason of the action I have taken in this matter. It is one thing to produce private books and papers in a proceeding where there is an opportunity to explain them and to examine and cross examine witnesses concerning them, but the situation in an ex parte proceeding is so different that I feel sure the Grand Jury will feel that I am justified in standing upon my constitutional rights in this matter.

WARREN B. WHEELER.

Upon the filing of this Petition, a summons is issued to Warren B. Wheeler, to appear before the District Court of the United States, to be holden at Boston, on Tuesday, the sixteenth day of April, A. D. 1912, at 9:30 A. M., then and there to show cause why the prayer of the petition for attachment for contempt upon complaint of the Grand Jurors for the District of Massachusetts against said Wheeler should not be granted.

Due Return is made by the Marshal upon said summons.

On the sixteenth day of said April, the following Motion of Warren B. Wheeler to Dismiss Petition is filed:

Motion of Warren B. Wheeler to Dismiss the Petition for Attachment for Contempt Against Him.

(Filed April 16, 1912.)

Now comes Warren B. Wheeler, the respondent in the above entitled proceeding, and moves this Honorable Court to dismiss said petition on the following grounds:

First. Because it plainly appears from the copy of the questions put to said Wheeler, and the answers given by him, as well as from

the copy of said Wheeler's written statement, both annexed to said petition, that this respondent when he appeared before said Grand Jury in response to said subpœna as alleged in said petition, repeatedly asserted his right to be sworn for the single purpose of explaining why he had not produced any books and papers in response to said subpœna, and that this right was denied him, and that he was not sworn, and not permitted to give under oath
10 his reasons for not producing any books and papers, or any of the other things referred to in said subpœna.

Second. This respondent cannot be in contempt of said Grand Jury unless and until he is permitted to exercise his right incident to the subpœna duces tecum addressed to the corporation, and served upon him, to state under oath to the Grand Jury the facts constituting his reasons for not producing any of the books, papers, or other things referred to in said subpœna, since until he has exercised that right the Court cannot judge whether the facts that he would state are or are not a sufficient reason for non-compliance with said subpœna.

Third. Under the terms of said subpœna this respondent was not under any legal obligation to answer any questions put to him when he appeared before said Grand Jury in response thereto.

Fourth. If the statements of fact contained in the memorandum addressed to said Grand Jury, and signed by this respondent, a copy of which is annexed to said petition, are to be regarded as if sworn to, and therefore as if evidence, it plainly appears that this respondent was under no legal obligation to produce any books, papers, or any of the other things mentioned in said subpœna before said Grand Jury for the reasons stated in said memorandum.

Fifth. One of the public laws of the Commonwealth of Massachusetts, of which this Court will take judicial notice, is the statute of 1912, Chap. 313, which took effect on March 25, 1912, by which said corporation Wheeler & Shaw, Inc., was dissolved and its charter annulled. Another public law of said Commonwealth is the Statute of 1903, Chap. 437, Sec. 52, which prescribed the terms upon which and the purposes for which the corporate existence continues of the corporation of which the charter has been annulled as aforesaid. Under and by virtue of said two statutes said corporation would not have been legally subject to said subpœna, or under any legal obligation to obey the same, even had said corporation had in its possession at the time of the service of said subpœna upon this respondent any of the books, papers, or other things called for in said subpœna.

By His Attorney, WM. G. THOMPSON.

On the same day, it is ordered by the Court, the Honorable Frederic Dodge, District Judge, sitting, that the foregoing
11 Motion of Warren B. Wheeler to Dismiss Petition be denied, to which order defendant excepts.

Also on the same day, the following Answer is filed:

Answer of Warren B. Wheeler to Petition for Attachment for Contempt.

(Filed April 16, 1912.)

Now comes Warren B. Wheeler, the respondent in the above entitled proceeding, and for answer says:

First. He admits that a subpœna of which a copy, with a copy of the officer's return thereon, is annexed to said petition, was served upon him on the 12th day of April, A. D. 1912.

Second. By a statute of the Commonwealth of Massachusetts which took effect on March 25, 1912, being Stat. 1912, Chap. 313, one of the public laws of said Commonwealth, said corporation Wheeler & Shaw, Inc., was dissolved and its charter annulled. Prior to the time said statute took effect this respondent was treasurer of said corporation, and he has never resigned said office.

Third. He admits that on the afternoon of said 12th day of April, he appeared before said Grand Jury in response to said subpœna, and that thereupon substantially the questions of which a copy is annexed to said petition were put to him, and answers substantially as stated in the copy of the same annexed to said petition were made by him, and the written statement of which a copy is annexed to said petition was left by him with said Grand Jury; but he avers that the Assistant Attorney General and the Assistant United States Attorney, who were then present in charge of said Grand Jury, and said Grand Jury itself, declined to administer to him the oath as requested by him for the purpose of enabling him to testify as to his reasons for not producing any books, papers, or other things in response to said subpœna.

Fourth. This respondent says that the statements of fact contained in the written statement left by him with said Grand Jury, of which a copy is annexed to said petition, are true.

Fifth. Long prior to the dissolution of said corporation, to wit, in the month of April, 1911, said corporation Wheeler & Shaw, Inc., ceased to do business, and the legal title as well as the possession of all the books, papers, records, and other documents then belonging to said corporation, including all that are re-

12 ferred to in said subpœna, was duly transferred to this respondent and one Stillman Shaw individually as tenants in common, and that the title and possession of all of said books, papers, records, and other documents still remain in this respondent and said Stillman Shaw, and that this respondent has no possession or custody of any of the same in his capacity of an officer of said corporation, but that his title and possession of the same are in his individual and private capacity.

WARREN B. WHEELER.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

BOSTON, *April* 16, 1912.

Then personally appeared the above named Warren B. Wheeler and made oath that the statements of fact contained in the foregoing answer subscribed by him are true.

Before me.

[SEAL.] GEORGE EVERETT KIMBALL,
Notary Public.

Also on the same day, this cause comes on to be heard upon the petition, summons to show cause, statement of facts, and answer and is fully heard by the Court, the Honorable Frederic Dodge, District Judge, sitting as aforesaid, and it is thereupon ordered that the defendant, Warren B. Wheeler, produce the books and papers as set forth in the subpœna to witness, at 2:00 P. M., April 17, 1912.

On the eighteenth day of April, the following Final Order adjudging defendant in contempt, is entered:

Final Order.

April 18, 1912.

DODGE, *J.:*

This petition came on to be heard upon a summons to show cause why the defendant Warren B. Wheeler should not be ordered to produce before the Grand Jurors of this Court the books and copies of letters and telegrams referred to in the subpœna, a copy of which is annexed to said petition, and upon failure or refusal to comply with said order be adjudged in contempt, and upon the petition and sworn answer of the defendant, and upon a statement of agreed facts, which facts are incorporated in the findings of fact made by the court as appears of record, and was argued by counsel for the respective parties before the court; and the defendant having submitted certain requests for rulings of law which the court refused, to which refusal the defendant duly excepted, and
13 the court having thereupon after fully hearing said cause, and after due deliberation, ordered the defendant in open court to produce before said Grand Jurors at two o'clock in the afternoon of Wednesday, April 17, 1912, the books and copies of letters and telegrams described in said subpœna, and the defendant having then informed the court that he would not comply with said order, alleging as his reason for such refusal that said order was in contravention of his right under the fourth amendment to the Constitution of the United States to be secure against unreasonable searches and seizures, and of his right under the fifth amendment to the Constitution of the United States not to be compelled in any criminal case to be a witness against himself, and of his right under Article 12 of the Declaration of Rights of the Consti-

tution of Massachusetts not to be compelled to accuse or furnish evidence against himself, it is thereupon, upon consideration thereof, and of the facts agreed to as aforesaid, ordered, adjudged and decreed:

First. The defendant Warren B. Wheeler is in contempt of this Court.

Second. The defendant Warren B. Wheeler is hereby committed to the custody of the United States Marshal for the District of Massachusetts until by producing before the grand inquest of the body of the people of the United States of America for the District of Massachusetts, at a District Court now holden in the Post Office Building in the City of Boston, the books and copies of letters and telegrams described in said subpœna, he shall cease to obstruct and impede the corporation known as the Wheeler & Shaw, Inc., and described in said subpœna, from complying with the said subpœna duces tecum, or otherwise purge himself from this contempt.

By the Court:

FRANK H. MASON,
Deputy Clerk.

A true record:
Attest:
CHARLES K. DARLING, *Clerk.*

14 *Findings of Fact.*

(Filed April 22, 1912.)

DODGE, *J.:*

After hearing the above entitled cause upon the order, petition and sworn answer of the defendant, and upon certain admissions of counsel for the United States made in open court, which were the only evidence in the case, the court makes the following findings of fact:

1. A subpœna, of which a copy with a copy of the officer's return thereon is annexed to said petition, was served upon the defendant on the twelfth day of April, A. D. 1912.

2. The corporation mentioned in the Statute of the Commonwealth of Massachusetts which took effect on March 25, 1912, being Statute 1912, Chapter 313, and therein described by the words "Wheeler and Shaw, Inc.", is the same corporation that is mentioned in said subpœna.

3. On the afternoon of said April 12th the defendant appeared before said Grand Jury in response to said subpœna, and thereupon the questions, of which a copy is annexed to said petition, were put to him, and answers as stated in the copy of the same annexed to said petition, were made by him, and the written statement, of which a copy is annexed to said petition, was left by him with said Grand Jury. The defendant did not bring with him or have before said Grand Jury any of the books and copies of letters and telegrams described in said subpœna. He did, when before said Grand Jury ask to be sworn for the purpose of stating the reasons why he had not brought with him any of said books and copies of letters

and telegrams; but he was not sworn. He did not waive or intend to waive his claim of a right to be sworn before said Grand Jury for the purpose aforesaid.

4. Sometime in the month of April, 1911, said corporation Wheeler & Shaw, Inc., ceased to do business, and shortly afterwards the legal title and possession of all the books and papers of said corporation then belonging to it, including all the books and copies of letters and telegrams described in the subpœna, were lawfully transferred to the defendant and to one Stillman Shaw as tenants in common, and have ever since remained in the defendant and said Shaw. Prior to the time when said statute of 1912, Chap. 313, took effect, the defendant was the treasurer of said corporation, and said Shaw was the president thereof, and neither the defendant nor said Shaw has ever resigned his said office in said corporation.

15 *Defendant's Bill of Exceptions.*

(Filed and Allowed April 22, 1912.)

This was a petition for attachment for contempt upon complaint of the Grand Jurors for the District of Massachusetts filed in this court on April 13, 1912. On April 16, 1912, the defendant appeared by his counsel and filed a motion to dismiss the said petition, as appears of record. The statements of fact in said petition were admitted by counsel of record for the United States. The court, however, overruled the motion, and the defendant duly excepted. Afterwards, on the same day, the defendant filed a sworn answer, as appears of record, and the case was then heard upon the petition, sworn answer, and certain facts agreed to by counsel in open court, which are incorporated and set out in the findings of fact of the court appearing of record. No evidence was introduced at the hearing except said admissions of counsel. At said hearing the defendant asked the court to make the following ruling:

"It being an admitted fact that this defendant when he appeared before said Grand Jury as alleged in said petition requested to be sworn for the purpose of explaining under oath why he did not produce the books, papers, and other things referred to in said subpœna, and that this request was not complied with, the court rules as matter of law that no order can be made upon the present petition requiring the respondent to produce said books and copies of letters and telegrams referred to in said petition."

This ruling was refused, and to the refusal the defendant duly excepted.

The defendant at said hearing before the court repeated the claim set up by him before the Grand Jury that a compliance with said subpœna duces tecum would violate his rights to be secure against unreasonable searches and seizures, and not to be compelled to be a witness against himself in any criminal case, under the fourth and fifth amendments to the United States Constitution; and also asked the court to rule that such an order would violate his rights under

the twelfth articles of the Bill of Rights of the Constitution of the Commonwealth of Massachusetts not to be compelled to accuse or furnish evidence against himself, and that the production before said Grand Jury of said books and copies of letters and telegrams would tend to criminate him; but the court, subject to the defendant's exception then duly taken, overruled all of said claims and requests, and also ruled that it was immaterial whether the production of said books and copies of letters and telegrams before said
16 Grand Jury, as required by said subpœna, would or would not tend to criminate the defendant.

The court also ruled as matter of law, subject to the defendant's exception duly taken, that the legal effect of what had been done toward dissolving the corporation, and toward transferring to the defendant and to Shaw the books and copies of letters and telegrams described in the subpœna, had not been to make said books and papers the private property of the defendant in such sense as to exempt the defendant from the duty of producing the same before the Grand Jury as required by said subpœna, and that there was no material distinction as matter of law between the facts in this case and the facts in the case of United States v. Wilson, 221 U. S. 365, such as would serve to take this case out of the principles laid down in that case. The subject under investigation by said Grand Jury was whether this defendant and said Shaw by means of said corporation or otherwise had violated the Act of Congress of March 4, 1909, being 35 Stat., Chap. 321, Sec. 215.

Thereafter the proceedings occurred recited in the final decree in this case with reference to the making by the court of the order to produce the books and copies of letters and telegrams, the refusal of the defendant to obey the order, and the adjudging of him to be in contempt, and the committing of him to the custody of the marshal. To the making of said order, and to the adjudging of the defendant in contempt, and to the committing of him to the marshal, the defendant duly excepted.

The foregoing are all the facts and proceedings material to the questions of law presented by this bill of exceptions. The defendant, being aggrieved by the aforesaid rulings and refusals to rule, and orders, and judgment of the court, now presents this his bill of exceptions and prays that the same may be allowed.

By His Attorney, WM. G. THOMPSON.

Allowed:

FREDERIC DODGE.

U. S. Distr. Judge, Distr. of Mass.

April 22/12.

17 *Petition for Writ of Error.*

(Filed April 22, 1912.)

Warren B. Wheeler, the defendant in the above entitled cause, conceiving himself aggrieved by the judgment entered therein on

the 18th day of April, 1912, adjudging him in contempt, and committing him to the custody of the United States Marshal, comes now by William G. Thompson, his attorney, and petitions said court for an order allowing said defendant to prosecute a writ of error to the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

WARREN B. WHEELER.
By His Attorney, WM. G. THOMPSON.

Allowed:
FREDERIC DODGE.
U. S. Distr. Judge, Distr. of Mass.

April 18/12.

Assignment of Errors.

(Filed April 22, 1912.)

Now comes Warren B. Wheeler, the plaintiff in error in the above entitled cause, and makes and files this his assignment of errors.

1. Said District Court erred in overruling this defendant's motion filed April 16, 1912, to dismiss said petition for attachment for contempt against him.

2. Said District Court erred in adjudging the defendant in contempt, and in committing him to the custody of the United States Marshal.

3. Said District Court erred in making the order recited in the final decree that the defendant produce said books and copies of letters and telegrams before said Grand Jury.

4. The District Court erred in refusing to grant the defendant's request for ruling numbered 7, namely,

"It being an admitted fact, that this defendant when he appeared before said Grand Jury as alleged in said petition requested to be sworn for the purpose of explaining under oath why he did not produce the books, papers, and other things referred to in said subpœna, and that this request was not complied with, the Court rules as matter of law that no order can be made upon the present
18 petition requiring the respondent to produce such books and copies of letters and telegrams referred to in said petition."

5. The District Court erred in ruling as matter of law that it was immaterial whether the production of the books and copies of letters and telegrams described in said subpœna would or would not tend to criminate the defendant.

6. The District Court erred in ruling that ordering this defendant to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right

secured to him by the fourth amendment to the Constitution of the United States to be secure from unreasonable searches and seizures.

7. The District Court erred in ruling that ordering the defendant to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to this defendant by the fifth amendment to the Constitution of the United States not to be compelled in any criminal case to be a witness against himself.

8. The District Court erred in ruling that ordering the defendant to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to this defendant by the twelfth article of the Bill of Rights of the Constitution of the Commonwealth of Massachusetts not to be compelled to accuse or furnish evidence against himself.

9. The District Court erred in ruling that the legal effect of what had been done toward transferring to the defendant and to Shaw as tenants in common the books and copies of letters and telegrams described in said subpœna, and toward dissolving said corporation Wheeler & Shaw, Inc., had not been to make said books and copies of letters and telegrams their private property in the sense that this defendant could not legally be compelled to produce the same under said subpœna duces tecum before said Grand Jury.

By His Attorney, WM. G. THOMPSON.

19 *Bond on Writ of Error.*

(Approved April 18, 1912; Filed April 22, 1912.)

Know all men by these presents that we, Warren B. Wheeler, of Boston, in the County of Suffolk, and Commonwealth of Massachusetts, as principal, and Henry B. Walker, of Brockton, in the County of Plymouth, as surety, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars ($250), to be paid to the said United States of America, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

The condition of the above obligation is such that whereas the above named defendant, Warren B. Wheeler, has sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the above entitled cause by the District Court of the United States for the District of Massachusetts, now the condition of this obligation is such that if the above named Warren B. Wheeler shall prosecute the said writ to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

Sealed with our seals and dated this 18th day of April, 1912.

WARREN B. WHEELER. [SEAL.]
HENRY B. WALKER. [SEAL.]

Approved April 18, 1912:
FREDERIC DODGE,
U. S. Distr. Judge, Distr. of Mass.

20 *Citation on Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, D. C., on the* twenty second day of May next, pursuant to a Writ of Error filed in the Clerk's Office of the† District Court of the United States for the District of Massachusetts, wherein Warren B. Wheeler is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Frederic Dodge, Judge of the District Court of the United States for the District of Massachusetts, this twenty fifth day of April, in the year of our Lord one thousand nine hundred and twelve.

FREDERIC DODGE,
U. S. District Judge.

*Not exceeding 30 days from the day of signing.
†Name of Court to which Writ of Error is directed.

21 *Acknowledgment of Service on Citation on Writ of Error.*

UNITED STATES OF AMERICA,
District of Mass., ss:

APRIL 26, 1912.

Due and sufficient service of the within citation is hereby acknowledged in behalf of the defendant in error.

WM. H. GARLAND,
Ass't United States Attorney.

21*a* *Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

[Seal of the District Court, Massachusetts.]

The President of the United States to the Honorable the Judge of the District Court of the United States for the District of Massachusetts, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between the United States of America, petitioner, and Stillman Shaw, defendant, a manifest error hath hap-

pened, to the great damage of the said defendant, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, D. C., on the* 22nd day of May next, in the said Supreme Court, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the United States, the twenty fifth day of April, in the year of our Lord one thousand nine hundred and twelve.

CHARLES K. DARLING,
Clerk of the District Court of the United States,
District of Massachusetts.

Allowed by

FREDERIC DODGE,
U. S. District Judge.

---

*Not exceeding 30 days from the day of signing the citation. Rule 14, Sec. 5.

22 *Return of District Court on Writ of Error.*

District Court of the United States.

DISTRICT OF MASSACHUSETTS, *ss:*

And now, here, the Judge of the District Court of the United States, in and for the District of Massachusetts, make return of this writ by annexing hereto and sending herewith, under the seal of the said District Court, a true and attested copy of the record and proceedings in the suit within mentioned, with all things concerning the same, to the Supreme Court of the United States, as within commanded.

In Testimony Whereof, I, Charles K. Darling, Clerk of said District Court of the United States, in and for the District of Massachusetts, have hereto set my hand and the seal of said Court this fifteenth day of May, A. D. 1912.

[Seal of the District Court, Massachusetts.]

CHARLES K. DARLING, *Clerk.*

23 *Transcript of Record of District Court.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

At a District Court of the United States, begun and holden at Boston, within and for the District of Massachusetts, on the third Tuesday of March, being the nineteenth day of March, in the year of our Lord one thousand nine hundred and twelve.

Before the Honorable Clarence Hale, District Judge.

No. 341. Equity Docket.

UNITED STATES OF AMERICA, Petitioner,
v.
STILLMAN SHAW, Defendant.

The Petition for Attachment for Contempt in this cause is filed in the clerk's office on the thirteenth day of April, A. D. 1912, and is duly entered at the present March Term of this Court, A. D. 1912, and is in the words and figures following:

Petition for Attachment for Contempt.

(Filed April 13, 1912.)

To the Honorable Frederic Dodge, Judge of the District Court of the United States for the District of Massachusetts:

The Grand Jurors for the District of Massachusetts, duly summoned, impanelled and sworn to inquire at the March Term of the District Court of the United States into any offenses committed against the laws of the United States within and for said District of Massachusetts, complain and inform your Honor that a subpœna was duly issued out of this court to Wheeler & Shaw, Incorporated, a corporation, on the twelfth day of April, A. D. 1912, returnable forthwith, and service of a copy thereof duly made upon one Stillman Shaw, President of said corporation, commanding said corporation to produce forthwith before said Grand Jury certain books, copies of letters and telegrams, as appear by a copy of said subpœna and of the officer's return thereon, hereto annexed; that on the afternoon of said twelfth day of April, the said Stillman Shaw appeared before said Grand Jury in response to

24 said subpœna, and upon being asked by the United States Attorney whether he had in his possession the books, copies of letters and telegrams mentioned in said subpœna, declined to answer. He also declined to answer whether he would produce said books, copies of letters and telegrams referred to in said subpœna;

And the Grand Jurors say that the production before them of said books, copies of letters and telegrams mentioned in said subpœna is, in their opinion, necessary to the investigation of an alleged offence committed in said District of Massachusetts by said Stillman Shaw and one Warren B. Wheeler.

The questions put to said Shaw and the answers given by him, together with a written statement read to the jury by said Shaw are hereto annexed.

Wherefore said Grand Jurors pray that said Stillman Shaw be ordered by this Honorable Court to produce said books, copies of letters and telegrams, and that upon a failure or refusal of said Shaw to comply with said order, that he be adjudged in contempt and further dealt with as this Honorable Court may direct.

GEO. WILLARD MARTIN,
Foreman of the Grand Jury.

Subpœna.

(MEMORANDUM.—Copy of Subpœna, referred to on the foregoing Petition as annexed is here omitted by direction of counsel, it being the same (mutatis mutandis) as the subpœna in cause No. 340, Eq., already copied on page 5 of this record.

CHARLES K. DARLING, *Clerk.*)

Stillman Shaw.

Q. Were you this morning served with a subpœna to produce before the Grand Jury books and papers of Wheeler and Shaw, Incorporated?

A. I have a statement in my pocket to that effect?

Q. You understand to what I refer?

A. Yes, sir.

Q. Have you such books in your possession?

A. Before answering that, I should like to be sworn for the purpose of presenting my reasons for not having any books or papers with me.

Q. The question I ask is whether you have them in your possession?

A. I decline to answer.

Q. You decline to say whether you have such books and papers in your possession?

A. Yes, sir.

Q. Do I understand you to say that you want to be sworn?

A. I want to be sworn for the purpose of stating my reasons for not having the books with me.

25 Q. The question is whether you will produce them or not?

A. I shall have to decline to answer.

Mr. GARLAND: I leave the matter to you, Mr. Foreman, whether under the circumstances he can answer the questions you may ask him now without being sworn?

Q. If I quote you correctly, you say that you would like to be sworn for the purpose of answering why you decline to answer that question. Will you produce the books and papers referred to in the subpœna?

A. I shall have to decline to answer.

Q. In order that there may be no mistake, Mr. Shaw, in regard to your position, I understand you to say that you decline to produce before the Grand Jury the books and papers referred to in the subpœna?

A. It was not what I intended to say. What I intended to say was I would like to be sworn for the one purpose of explaining my reasons for not having any books or papers with me today.

Q. Can't you state this without being sworn?

A. I have asked to have you swear me in order that I may give my reasons.

Q. Is this statement similar to that presented by Mr. Wheeler?

A. Yes, sir. I will leave it for the Grand Jury.

I hereby certify that the above is a correct transcript of the questions and answers propounded to the above Stillman Shaw before the Grand Jury, this 12th day of April, 1912, and a copy of statement referred to annexed.

FRANKLIN M. ERLANBACH,
Clerk Grand Jury.

Statement of Facts.

(MEMORANDUM.—Copy of Statement of Facts, referred to as annexed, is here omitted, by direction of counsel, being the same as the one already copied in case #340, Eq., on page 8 of this record.

CHARLES K. DARLING, *Clerk.*)

Upon the filing of this Petition, a summons is issued to Stillman Shaw, to appear before the District Court of the United States, to be holden at Boston, on Tuesday, the 16th day of April, A. D. 1912, at 9:30 A. M., then and there to show cause why the prayer of the petition for attachment for contempt upon complaint of the Grand Jurors for the District of Massachusetts against said Shaw should not be granted.

Due return is made by Marshal upon said summons.

On the sixteenth day of said April, the following Motion of Stillman Shaw to dismiss Petition is filed:

26 *Motion of Stillman Shaw to Dismiss the Petition for Attachment for Contempt Against Him.*

(Filed April 16, 1912.)

(MEMORANDUM.—Copy of Motion of Stillman Shaw to Dismiss Petition, etc., is here omitted by direction of counsel, it being the

same as one already copied in case No. 340, Eq., on page 9 of this record.

CHARLES K. DARLING, *Clerk.*)

On the same day, it is ordered by the Court, the Honorable Frederic Dodge, District Judge, sitting, that the foregoing Motion of Stillman Shaw to Dismiss Petition be denied, to which order defendant excepts.

Also on the same day, the following Answer is filed:

Answer of Stillman Shaw to Petition for Attachment for Contempt.

(Filed April 16, 1912.)

(MEMORANDUM.—Copy of Answer is here omitted, by direction of counsel, it being the same (mutatis mutandis) as the Answer in case No. 340, Eq., already copied on page 11 of this record.

CHARLES K. DARLING, *Clerk.*)

Also on the same day, this cause comes on to be heard upon the petition, summons to show cause, statement of facts, and answer, and is fully heard by the Court, the Honorable Frederic Dodge, District Judge, sitting as aforesaid, and it is thereupon ordered that the defendant, Stillman Shaw, produce the books and papers as set forth in the subpœna to witness, at 2:00 P. M., April 17, 1912.

On the eighteenth day of said April, the following Final Order, adjudging defendant in contempt, is entered:

Final Order.

APRIL 18, 1912.

DODGE, *J.*:

This petition came on to be heard upon a summons to show cause why the defendant Stillman Shaw should not be ordered to produce before the Grand Jurors of this Court the books and copies of letters and telegrams referred to in the subpœna, a copy of which is annexed to said petition, and upon failure or refusal to comply with said order be adjudged in contempt, and upon the petition and sworn answer of the defendant, and upon a statement of agreed facts, which facts are incorporated in the findings of fact made by the court as appears of record, and was argued by counsel for the respective parties before the Court; and the defendant having submitted certain requests for rulings of law which the court refused, to which refusal the defendant duly excepted, and the court having thereupon after fully hearing said cause, and after due deliberation, ordered the defendant in open court to produce before said Grand Jurors at two o'clock in the afternoon of Wednesday, April 17, 1912, the books and copies of letters and telegrams de-
27 scribed in said subpœna, and the defendant having then informed the court that he would not comply with said order,

alleging as his reason for such refusal that said order was in contravention of his right under the fourth amendment to the Constitution of the United States to be secure against unreasonable searches and seizures, and of his right under the fifth amendment to the Constitution of the United States not to be compelled in any criminal case to be a witness against himself, and of his right under Article 12 of the Declaration of Rights of the Constitution of Massachusetts not to be compelled to accuse or furnish evidence against himself, it is thereupon, upon consideration thereof, and of the facts agreed to as aforesaid, ordered, adjudged and decreed:

First. The defendant Stillman Shaw is in contempt of this court.

Second. The defendant Stillman Shaw is hereby committed to the custody of the United States Marshal for the District of Massachusetts until by producing before the grand inquest of the body of the people of the United States of America for the District of Massachusetts, at a District Court now holden in the Post Office Building in the City of Boston, the books and copies of letters and telegrams described in said subpœna, he shall cease to obstruct and impede the corporation known as the Wheeler & Shaw, Inc., and described in said subpœna, from complying with the said subpœna duces tecum, or otherwise purge himself from this contempt.

By the Court:

FRANK H. MASON,
Deputy Clerk.

A true record.
Attest:

CHARLES K. DARLING, *Clerk.*

28 *Findings of Fact.*

(Filed April 22, 1912.)

(MEMORANDUM.—By direction of counsel, copy of Findings of Fact is here omitted, as it is the same, with exception of insertion of the name of the proper defendant, as that already copied in case No. 340 Eq., on page 14 of this record.

CHARLES K. DARLING, *Clerk.*)

Defendant's Bill of Exceptions.

(Filed and Allowed April 22, 1912.)

(MEMORANDUM.—By direction of counsel, copy of Defendant's Bill of Exceptions is here omitted, it being identical with one already copied in No. 340 Eq., on page 15 of this record.

CHARLES K. DARLING, *Clerk.*)

Petition for Writ of Error.

(Filed April 22, 1912.)

Stillman Shaw, the defendant in the above entitled cause, conceiving himself aggrieved by the judgment entered therein on the 18th day of April, 1912, adjudging him in contempt, and committing him to the custody of the United States Marshal, comes now by William G. Thompson, his attorney, and petitions said court for an order allowing said defendant to prosecute a writ of error to the Supreme Court of the United States under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the Supreme Court of the United States.

STILLMAN SHAW,
By His Attorney WM. G. THOMPSON.

Allowed:

FREDERIC DODGE,
U. S. District Judge, Distr. of Mass.

April 18/12.

29 *Assignment of Errors.*

(Filed April 22, 1912.)

Now comes Stillman Shaw, the plaintiff in error in the above entitled cause and makes and files this his assignment of errors.

1. Said district Court erred in overruling this defendant's motion filed April 16, 1912, to dismiss said petition for attachment for contempt against him.

2. Said District Court erred in adjudging the defendant in contempt, and in committing him to the custody of the United States Marshal.

3. Said District Court erred in making the order recited in the final decree that the defendant produce said books and copies of letters and telegrams before said Grand Jury.

4. The District Court erred in refusing to grant the defendant's request for ruling numbered 7, namely,

"It being an admitted fact that this defendant when he appeared before said Grand Jury as alleged in said petition requested to be sworn for the purpose of explaining under oath why he did not produce the books, papers, and other things referred to in said subpoena, and that this request was not complied with, the court rules as matter of law that no order can be made upon the present petition requiring the respondent to produce such books and copies of letters and telegrams referred to in said petition."

5. The District Court erred in ruling as matter of law that it was and telegrams described in said subpœna would or would not tend to criminate the defendant.

6. The District Court erred in ruling that ordering this defendant to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to him by the fourth amendment to the Constitution of the United States to be secure from unreasonable searches and seizures.

7. The District Court erred in ruling that ordering the defendant to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to this defendant by the fifth amendment to the Constitution of the United States not to be compelled in any criminal case to be a witness against himself.

8. The District Court erred in ruling that ordering the defendant to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to this defendant by the twelfth article of the Bill of Rights of the Constitution of the Commonwealth of Massachusetts not to be compelled to accuse or furnish evidence against himself.

9. The District Court erred in ruling that the legal effect of what had been done toward transferring to the defendant and to Wheeler as tenants in common the books and copies of letters and telegrams described in said subpœna, and towards dissolving said corporation Wheeler & Shaw, Inc., had not been to make said books and copies of letters and telegrams their private property in the sense that this defendant could not legally be compelled to produce the same under said subpœna duces tecum before said Grand Jury.

By His Attorney, WM. G. THOMPSON.

Bond on Writ of Error.

(Approved April 18, 1912; Filed April 22, 1912.)

Know all men by these presents that we, Stillman Shaw, of Boston, in the County of Suffolk, and Commonwealth of Massachusetts, as principal, and Henry B. Walker, of Brockton, in the County of Plymouth, as surety, are held and firmly bound unto the United States of America in the full and just sum of two hundred and fifty dollars ($250), to be paid to the said United States of America, to which payment well and duly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

The condition of the above obligation is such that whereas the above named defendant Stillman Shaw, has sued out a writ of error to the Supreme Court of the United States to reverse the judgment in the above entitled cause by the District Court of the United States for the District of Massachusetts, now the condition of this obligation is such that if the above named Stillman Shaw shall prosecute

the said writ to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

Sealed with our seals and dated this 18th day of April, 1912.

STILLMAN SHAW, [SEAL.]
HENRY B. WALKER. [SEAL.]

Approved:

FREDERIC DODGE,
U. S. Distr. Judge, Distr. of Mass.

April 18/12.

31 *Citation on Writ of Error.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, D. C., on the* twenty second day of May next, pursuant to a Writ of Error filed in the Clerk's Office of the† District Court of the United States for the District of Massachusetts wherein Stillman Shaw is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Frederic Dodge, Judge of the District Court of the United States for the District of Massachusetts this twenty fifth day of April, in the year of our Lord one thousand nine hundred and twelve.

FREDERIC DODGE,
U. S. District Judge.

*Not exceeding 30 days from the day of signing.
†Name of Court to which Writ of Error is directed

32 *Acknowledgment of Service on Citation on Writ of Error.*

UNITED STATES OF AMERICA,
District of Mass., ss:

APRIL 26, 1912.

Due and sufficient service of the within citation is hereby acknowledged in behalf of the defendant in error.

WM. H. GARLAND,
Assistant United States Attorney.

33 *Stipulation of Counsel as to Record.*

(Filed May 13, 1912.)

No. 340. Equity.

UNITED STATES, Petitioner,
v.
WARREN B. WHEELER.

No. 341. Equity.

UNITED STATES, Petitioner,
v.
STILLMAN SHAW.

It is hereby stipulated and agreed between counsel for both parties that the Transcripts of Record in the cases entitled, No. 340 Equity, United States, Petitioner, v. Warren B. Wheeler, and No. 341 Equity United States, Petitioner, v. Stillman Shaw, the causes of action and the pleadings being substantially identical, may be transmitted to the United States Supreme Court under one cover, and that No. 340 Equity may be copied in full, but that No. 341 Equity may be shortened by making references only to papers which are the same as are those in No. 340 Equity and have been therein set out in full.

WILLIAM G. THOMPSON,
ROMNEY SPRING,
Attorney- for Respondents.
WM. H. GARLAND,
Attorney for Petitioner.

34 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, Charles K. Darling, clerk of the District Court of the United States, within and for the District of Massachusetts, certify that the foregoing are true copies of the records and all proceedings in the causes in equity entitled No. 340, United States of America, Petitioner, v. Warran B. Wheeler, Defendant, and No. 341, United States of America, Petitioner, v. Stillman Shaw, Defendant, in said District Court determined, the Findings of Fact, the Defendants' Bills of Exceptions, the Petitions for Writ of Error, the Assignments of Errors, the Bonds on Writ of Error, the Stipulation of Counsel as to Record, and also the original Citations upon the Writs of Error issued in said cause, with the Acknowledgments of Service thereon.

In testimony whereof I hereunto set my hand and affix the seal of said District Court, at Boston, in said District, this fifteenth day of May, A. D. 1912.

[Seal of the District Court, Massachusetts.]

CHARLES K. DARLING, *Clerk.*

Endorsed on cover: File No. 23,224. Massachusetts D. C. U. S. Term No. 658. Warren B. Wheeler, plaintiff in error, vs. The United States. File No. 23,225. Term No. 659. Stillman Shaw, plaintiff in error, vs. The United States. File May 29th, 1912. File Nos. 23,224 and 23,225.

20

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 660.

WARREN B. WHEELER, APPELLANT,

vs.

GUY MURCHIE, UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF MASSACHUSETTS.

No. 661.

STILLMAN SHAW, APPELLANT,

vs.

GUY MURCHIE, UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF MASSACHUSETTS.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

FILED MAY 29, 1912.

(23,226 and 23,227.)

(23,226 and 23,227.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. 660.

WARREN B. WHEELER, APPELLANT,

vs.

GUY MURCHIE, UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF MASSACHUSETTS.

No. 661.

STILLMAN SHAW, APPELLANT,

vs.

GUY MURCHIE, UNITED STATES MARSHAL IN AND FOR THE DISTRICT OF MASSACHUSETTS.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

INDEX.

	Original	Print
Record in Wheeler *vs.* Murchie, United States marshal (No. 265) ..	1	1
Court and title of cause.....	1	1
Petition for writ of *habeas corpus*.....	1	1
Exhibit A—Final order adjudging defendant in contempt in case No. 340.....	4	3
B—Findings of fact in case No. 340.....	5	4
C—Petition for attachment for contempt, with papers annexed thereto, in case No. 340.....	6	5
D—Answer of defendant Wheeler in case No. 340..	12	10

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 1, 1912.

	Original	Print
Final order, April 22, 1912	14	11
Petition for appeal	15	11
Assignment of errors	15	12
Agreement as to facts and bond	16	12
Citation on appeal	17	13
Acknowledgment of service on citation on appeal	18	13
Record in Shaw *vs.* Murchie, United States marshal (No. 266)	19	14
Court and title of cause	19	14
Petition for writ of *habeas corpus*	19	14
Memorandum as to omission of exhibits	22	16
Questions and answers, part of Exhibit C	22	16
Final order, April 22, 1912	24	17
Petition for appeal	25	18
Assignment of errors	25	18
Agreement as to facts and bond (memorandum as to omission)	26	19
Citation on appeal	27	19
Acknowledgment of service on citation on appeal	28	20
Stipulation of counsel as to record	29	20
Clerk's certificate	30	21

1 *Transcript of Record of District Court.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

At a District Court of the United States, begun and holden at Boston, within and for the District of Massachusetts, on the third Tuesday of March, being the nineteenth day of March, in the year of our Lord one thousand nine hundred and twelve.

Before the Honorable Clarence Hale, District Judge.

No. 265, Law Docket.

WARREN B. WHEELER, Petitioner for Writ of Habeas Corpus,
v.
GUY MURCHIE, United States Marshal.

The Petition in this cause is filed in the clerk's office on the twenty second day of April, A. D. 1912, and is duly entered at the present March Term of this Court, A. D. 1912, and is in the words and figures following:

Petition for Writ of Habeas Corpus.

(Filed April 22, 1912.)

To the District Court of the United States in and for the District of Massachusetts:

Your petitioner, Warren B. Wheeler, respectfully shows:

1. That he is a citizen of the United States and an inhabitant and citizen of the State of Massachusetts, and a resident of the City of Boston, in the District of Massachusetts.

2. That your petitioner is now actually imprisoned and restrained of his liberty and detained by color of the authority of the United States in the custody of Guy Murchie, United States Marshal, in and for the District of Massachusetts, to wit, in the City of Boston in said District.

3. That the sole claim or authority by virtue of which the said Guy Murchie, Marshal as aforesaid, so restrains and detains
2 your petitioner, is a commitment in writing, in due form, made in pursuance of an order of this Court made and entered at a stated term thereof held at the Post Office Building in said City of Boston, on the 18th day of April, 1912. A copy of said order is hereto annexed and marked Exhibit A. A copy of the findings of fact by this Court referred to in said order is hereto annexed and marked Exhibit B.

4. That said last mentioned order was made and based solely and exclusively upon a certain petition for attachment for contempt upon complaint of the Grand Jurors for said District of Massachusetts against your petitioner, upon the sworn answer of your petitioner thereto, and upon the findings of fact therein made and herein before referred to. A copy of said petition, with copies of the subpœna, minutes of the Grand Jury, and paper annexed thereto, are hereto annexed, made part hereof, and marked Exhibit C. A copy of said sworn answer is hereto annexed, made part hereof, and marked Exhibit D.

5. That your petitioner's imprisonment and restraint are without authority of law whatsoever, and in violation of his rights, privileges, and immunities under the Constitution and laws of the United States, and under the Constitution of the Commonwealth of Massachusetts, for the following reasons:

(*a*) This Court was without jurisdiction to entertain any charge or charges of contempt against your petitioner, or to act or proceed in any manner in the premises and in the matter of said petition of said Grand Jury; among other reasons being the reason appearing in said findings of fact, and elsewhere of record, that your petitioner having requested to be sworn when he appeared before the Grand Jury for the purpose of explaining why he did not produce the books and copies of letters and telegrams referred to in said petition, the oath which he requested was refused.

(*b*) Because the order of this Court requiring your petitioner to produce said books and copies of letters and telegrams before said Grand Jury, as required by said subpœna duces tecum, was a violation of the rights secured to your petitioner by the Fourth Amendment to the Constitution of the United States to be exempt from unreasonable searches and seizures, and by the Fifth Amendment to the Constitution of the United States not to be compelled to be a witness against himself in any criminal case, and by the
3 Twelfth Article of the Bill of Rights of the Constitution of Massachusetts not to be compelled to accuse or furnish evidence against himself, all of which rights were duly and repeatedly asserted and claimed by your petitioner, as appears by said final order and otherwise.

(*c*) Because all the books and copies of letters and telegrams referred to in said subpœna and in said petition were the sole, individual, and private property of your petitioner as tenant in common with one Stillman Shaw, and neither the title, possession, nor custody of the same were in said corporation, Wheeler & Shaw, Inc., or in your petitioner as an officer or agent of said corporation.

6. Your petitioner is advised by counsel and verily believes that for the reasons above stated the order adjudging him guilty of contempt, and his commitment pursuant to said order to the custody of said Marshal, were without legal right, authority, or jurisdiction of any kind, and are utterly void and ineffectual, and that his detention and imprisonment thereunder are in violation of the Constitution of the United States and of the Constitution of the Com-

monwealth of Massachusetts, and of his rights, privileges, and immunities thereunder.

Wherefore your petitioner prays that a writ of habeas corpus may issue, directed to said Guy Murchie, Esq., Marshal as aforesaid, or to any of his Deputies, requiring him or them to bring and have your petitioner before this court, at a time to be by it determined, together with the true cause of his detention, to the end that due inquiry may be had in the premises, and that this court may proceed in a summary way to determine the facts of the case in that regard and the legality of your petitioner's imprisonment, restraint, and detention, and thereupon to dispose of your petitioner as law and justice require.

Dated at the City of Boston, on the 22nd day of April, 1912.

WARREN B. WHEELER.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

Warren B. Wheeler, being duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge.

Sworn to, before me, this 22nd day of April, 1912.

GEORGE EVERETT KIMBALL,
Notary Public.

4 EXHIBIT A.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

In the District Court.

UNITED STATES OF AMERICA
v.
WARREN B. WHEELER.

In the Matter of the Petition for Attachment for Contempt Against WARREN B. WHEELER upon Complaint of the Grand Jurors for the District of Massachusetts.

Final Order Adjudging the Defendant in Contempt.

APRIL 18, 1912.

DODGE, *J.:*

This petition came on to be heard upon a summons to show cause why the defendant Warren B. Wheeler should not be ordered to produce before the Grand Jurors of this Court the books and copies of letters and telegrams referred to in the subpœna, a copy of which is annexed to said petition, and upon failure or refusal

to comply with said order, be adjudged in contempt, and upon the petition and sworn answer of the defendant, and upon a statement of agreed facts, which facts are incorporated in the findings of fact made by the Court as appears of record, and was argued by counsel for the respective parties before the Court; and the defendant having submitted certain requests for rulings of law which the Court refused, to which refusal the defendant duly excepted, and the Court having thereupon after fully hearing said cause, and after due deliberation, ordered the defendant in open court to produce before said Grand Jurors at two o'clock in the afternoon of Wednesday, April 17, 1912, the books and copies of letters and telegrams described in said subpœna, and the defendant having then informed the Court that he would not comply with said order, alleging as his reason for such refusal that said order was in contravention of his right under the fourth amendment to the Constitution of the United States to be secure against unreasonable searches and seizures, and of his right under the fifth amendment to the Constitution of the United States not to be compelled in any criminal case to be a witness against himself, and of his right under Article 12 of the Declaration of Rights of the Constitution of Massachusetts not to be compelled to accuse or furnish evidence against himself, it is thereupon, upon consideration thereof, and of the facts agreed to as aforesaid, ordered, adjudged, and decreed:

First: The defendant Warren B. Wheeler is in contempt of this Court.

Second: The defendant Warren B. Wheeler is hereby committed to the custody of the United States Marshal for the District of Massachusetts until by producing before the grand inquest of the body of the people of the United States of America for the District of Massachusetts, at a District Court now holden in the Post Office Building in the City of Boston, the books and copies of letters and telegrams described in said subpœna, he shall cease to obstruct and impede the corporation known as the Wheeler & Shaw, Inc., and described in said subpœna, from complying with the said subpœna duces tecum, or otherwise purge himself from this contempt.

By the Court:

FRANK H. MASON,
Deputy Clerk.

Exhibit B.

United States of America,
District of Massachusetts, ss:

In the District Court.

United States of America
v.
Warren B. Wheeler.

In the Matter of the Petition for Attachment for Contempt Against Warren B. Wheeler upon Complaint of the Grand Jurors for the District of Massachusetts.

Findings of Fact.

Dodge, *J.:*

After hearing the above entitled cause upon the order, petition, and sworn answer of the defendant, and upon certain admissions of counsel for the United States made in open court, which were the only evidence in the case, the Court makes the following findings of fact:

1. A subpœna, of which a copy with a copy of the officer's return thereon is annexed to said petition, was served upon the defendant on the twelfth day of April, A. D. 1912.

2. The corporation mentioned in the Statute of the Commonwealth of Massachusetts which took effect on March 25, 1912, being Statute 1912, Chapter 313, and therein described by the words "Wheeler and Shaw, Inc.", is the same corporation that is mentioned in said subpœna.

6 On the afternoon of said April 12th the defendant appeared before said Grand Jury in response to said subpœna, and thereupon the questions, of which a copy is annexed to said petition, were put to him, and answers as stated in the copy of the same annexed to said petition, were made by him, and the written statement, of which a copy is annexed to said petition, was left by him with said Grand Jury. The defendant did not bring with him or have before said Grand Jury any of the books and copies of letters and telegrams described in said subpœna. He did, when before said Grand Jury, ask to be sworn for the purpose of stating the reasons why he had not brought with him any of said books and copies of letters and telegrams; but he was not sworn. He did not waive or intend to waive his claim of right to be sworn before said Grand Jury for the purpose aforesaid

4. Sometime in the month of April, 1911, said corporation Wheeler & Shaw, Inc., ceased to do business, and shortly afterwards the legal title and possession of all the books and papers of said corporation then belonging to it, including all the books and copies of letters and telegrams described in the subpœna, were lawfully transferred to the defendant and to one Stillman Shaw as tenants in common, and have ever since remained in the defendant and

said Shaw. Prior to the time when said statute of 1912, Chap. 313, took effect, the defendant was the treasurer of said corporation, and said Shaw was the president thereof, and neither the defendant nor said Shaw has ever resigned his said office in said corporation.

Exhibit C.

District Court of the United States, District of Massachusetts.

Petition for Attachment for Contempt upon Complaint of the Grand Jurors for said District of Massachusetts Against Warren B. Wheeler.

To the Honorable Frederic Dodge, Judge of the District Court of the United States for the District of Massachusetts:

The Grand Jurors for the District of Massachusetts, duly summoned, impanelled, and sworn to inquire at the March Term of the District Court of the United States into any offences committed against the laws of the United States within and for said
7 District of Massachusetts, complain and inform your Honor that a subpœna was duly issued out of this Court to Wheeler and Shaw, Incorporated, a corporation, on the twelfth day of April, A. D. 1912, returnable forthwith, and service of a copy thereof duly made upon one Warren B. Wheeler, Treasurer of said corporation, commanding said corporation to produce forthwith before said Grand Jury certain books, copies of letters and telegrams, as appear by a copy of said subpœna and of the officer's return thereon, hereto annexed; that on the afternoon of said twelfth day of April, the said Warren B. Wheeler appeared before said Grand Jury in response to said subpœna, and upon being asked by the United States Attorney whether he would produce the books, copies of letters and telegrams called for by said subpœna, stated that he did not have them, and upon being asked the direct question whether he had the books in his possession, declined to answer. He also declined to answer the question whether he would produce said books then, or within a reasonable time thereafter. And the Grand Jurors say that the production before them of said books, copies of letters and telegrams mentioned in said subpœna is, in their opinion, necessary to the investigation of an alleged offence committed in said District of Massachusetts by said Warren B. Wheeler and one Stillman Shaw. The questions put to said Wheeler and the answers given by him, together with a written statement read to the jury by said Wheeler are hereto annexed.

Wherefore said Grand Jurors pray that said Warren B. Wheeler be ordered by this Honorable Court to produce said books, copies of letters and telegrams, and that upon a failure or refusal of said Wheeler to comply with said order, that he be adjudged in contempt and further dealt with as this Honorable Court may direct.

GEO. WILLARD MARTIN,
Foreman of the Grand Jury.

8 UNITED STATES OF AMERICA,
Massachusetts District, ss:

[SEAL.]

The President of the United States of America to the Marshal of the District of Massachusetts or either of his Deputies, Greeting:

You are hereby required to summon Wheeler & Shaw, Incorporated, a corporation doing business at Boston in said district, if it may be found in your District, to appear before the Judge of our District Court of the United States, to be holden at Boston, within and for the District of Massachusetts, forthwith and not depart the said Court without leave of the Court or District Attorney first had and obtained; and warn said corporation to produce at the time and place aforesaid all cash books, ledgers, journals and other books of account of said Wheeler and Shaw, Incorporated, for and covering the period between October 1, 1909 and January 1, 1911; all copies of letters and telegrams of Wheeler and Shaw, Incorporated, signed or purporting to be signed by said Wheeler and Shaw, Incorporated, or by its President or its Treasurer in behalf of said Wheeler and Shaw, Incorporated, during the months of October, November and December, 1909, and the entire year of 1910; all the aforesaid books, copies of letters and telegrams to be produced before the Grand Jurors of said District Court in the matter of an alleged violation of the laws of the United States by Warren B. Wheeler and Stillman Shaw; that for default and non-appearance it will have to abide the pains and penalties of the law in that behalf made and provided.

Hereof fail not, and make due return of this writ with your doings thereon, unto our said Court, as soon after the service thereof as may be.

Witness, the Honorable Frederic Dodge at Boston aforesaid, the 12th day of April in the year of our Lord one thousand nine hundred and twelve.

MARY E. PRENDERGAST,
Deputy Clerk.

PEYTON GORDON,
Special Assistant to the Attorney General.

A true copy:
Attest:

JAMES A. TIGHE,
Deputy U. S. Marshal.

9 UNITED STATES OF AMERICA.
Massachusetts District, ss:

BOSTON, *April 12th*, 1912.

Pursuant hereunto, I this day have summoned the within named Wheeler & Shaw, Incorporated to appear at Court as within directed, by giving in hand to Warren B. Wheeler, Treasurer of defendant corporation at Boston in said District A true and attested copy of

this subpœna directing him to bring with him the things named in this Subpœna.

GUY MURCHIE, *U. S. Marshal,*
By JAMES A. TIGHE, *Deputy.*

10 Q. Your name is Warren B. Wheeler?
A. Yes, sir.
Q. You have come here in response to a subpœna served upon you?
A. Yes, sir.
Q. Will you produce the books and papers which are called for in that subpœna?
A. I would like to be sworn to explain why I have not produced them.
Q. The question I ask you is simply whether you will produce them?
A. I have not them.
Q. Have you the books in your possession?
A. I decline to answer.
Q. Will you state your reasons for declining to answer the question?
A. Yes, sir. I have a paper which I will read myself or hand it to you to read.
Q. You may read it.

(Witness reads statement).

Q. Are you willing to leave this statement with the clerk of the Grand Jury?
A. Yes, sir.

(The minutes were left with the clerk)

Q. Do I understand you correctly when you say that the books are in your possession, but that they are your private property?
A. No, sir.
Q. I thought you said that the books and papers were your own personal property?
A. Yes, sir.
Q. May I ask you this question: Do you mean that you have in your possession books which were formerly the books, etc., of Wheeler & Shaw, Inc.?
A. I decline to answer.
(Certification, followed by statement of witness)
Q. Will you produce them either now or within a reasonable time hereafter?
A. I decline to answer.

11 To the Grand Jurors of the District Court of the United States for the District of Massachusetts.

GENTLEMEN: There was served upon me at 12.50 P. M. today, April 12, 1912, a subpœna addressed to Wheeler & Shaw, Inc., a corporation doing business at Boston, in said District, and calling

upon that corporation to produce before you, presumably through me,

"all cash books, ledgers, journals, and other books of account of said Wheeler & Shaw, Inc., for and covering the period between October 1, 1909, and January 1, 1911, all copies of letters and telegrams of Wheeler & Shaw, Inc., signed or purporting to be signed by said Wheeler & Shaw, Inc., or by its president or its treasurer in behalf of said Wheeler & Shaw, Inc., during the months of October, November, and December, 1909, and the entire year of 1910; all the aforesaid books, copies of letters, and telegrams to be produced before the Grand Jurors of said District Court in the matter of an alleged violation of the laws of the United States by Warren B. Wheeler and Stillman Shaw."

I desire to avail myself of what I understand to be my right to state to you my reasons for not producing any books, ledgers, or other papers or documents in response to said summons. My reasons are:

First: That I have not in my possession or custody any cash books, ledgers, journals, or any of the other books or things described in said subpœna which belong to Wheeler & Shaw, Inc., or are in my possession as an officer or agent of Wheeler & Shaw, Inc. The only cash books, ledgers, journals, and other books, papers, and things to which the aforesaid description in said subpœna could apply are the personal property of myself and Stillman Shaw, and are in our personal possession, and are not in the possession of either of us as officers or agents of any corporation.

Second: Even were the fact not as stated above, I am advised that the language of said subpœna quoted above is so broad, sweeping, and lacking in particularity as to constitute a violation of the rights of any party to whom a subpœna is addressed to be exempt from unreasonable searches and seizures under the fourth amendment to the United States Constitution.

Third: Whether addressed to said corporation or to me personally, I am advised that said subpœna violates the rights secured to me by the fifth amendment to the Constitution of the United States not to be a witness against myself in any criminal case.

12 I make this statement in good faith, and not intending any disrespect to the Grand Jury, or to the officers of the Government, and I venture to remind the Grand Jury that I am entitled under the laws of the United States not to have any inferences drawn against me by reason of the action I have taken in this matter. It is one thing to produce private books and papers in a proceeding where there is an opportunity to explain them and to examine and cross examine witnesses concerning them; but the situation in an ex parte proceeding is so different that I feel sure the Grand Jury will feel that I am justified in standing upon my constitutional rights in this matter.

WARREN B. WHEELER.

Exhibit D.

United States of America,
District of Massachusetts, ss:

In the District Court.

In re Petition for Attachment for Contempt upon Complaint of the Grand Jurors for the District of Massachusetts against Warren B. Wheeler.

Answer of Warren B. Wheeler to the Petition for Attachment for Contempt against Him.

Now comes Warren B. Wheeler, the respondent in the above entitled proceeding, and for answer says:

First. He admits that a subpœna of which a copy, with a copy of the officer's return thereon, is annexed to said petition, was served upon him on the 12th day of April, A. D. 1912.

Second. By a statute of the Commonwealth of Massachusetts which took effect on March 25, 1912, being Stat. 1912, Chap. 313, one of the public laws of said Commonwealth, said corporation Wheeler & Shaw, Inc., was dissolved and its charter annulled. Prior to the time said statute took effect this respondent was treasurer of said corporation, and he has never resigned said office.

Third. He admits that on the afternoon of said 12th day of April, he appeared before said Grand Jury in response to said subpœna, and that thereupon substantially the questions of which a copy is annexed to said petition were put to him, and answers substantially as stated in the copy of the same annexed to said petition were made by him, and the written statement of which a copy is annexed to said petition was left by him with said Grand
13 Jury; but he avers that the Assistant Attorney General and the Assistant United States Attorney, who were then present in charge of said Grand Jury, and said Grand Jury itself, declined to administer to him the oath as requested by him for the purpose of enabling him to testify as to his reasons for not producing any books, papers, or other things in response to said subpœna.

Fourth. This respondent says that the statements of fact contained in the written statement left by him with said Grand Jury, of which a copy is annexed to said petition, are true.

Fifth. Long prior to the dissolution of said corporation, to wit, in the month of April, 1911, said corporation Wheeler & Shaw, Inc., ceased to do business, and the legal title as well as the possession of all the books, papers, records, and other documents then belonging to said corporation, including all that are referred to in said subpœna, was duly transferred to this respondent and one Stillman Shaw individually as tenants in common, and that the title and possession of all of said books, papers, records, and other documents still remain in this respondent and said Stillman Shaw, and that this respondent has no possession or custody of any of the same in his capacity of an officer of said corporation, but that his title

and possession of the same are in his individual and private capacity.

WARREN B. WHEELER.

COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

BOSTON, *April* 16, 1912.

Then personally appeared the above named Warren B. Wheeler and made oath that the statements of fact contained in the foregoing answer subscribed by him are true.

Before me,

GEORGE EVERETT KIMBALL. [SEAL.]
Notary Public.

14 On the same day, this cause is set down for hearing upon said petition and is fully heard by the Court, the Honorable Frederic Dodge, District Judge, sitting, and the following Final Order is entered denying petition:

Final Order.

April 22, 1912.

DODGE, *J.:*

Upon the above entitled petition, Guy Murchie, Esq., U. S. Marshal in and for this District, having appeared by William H. Garland, Esq., Assistant U. S. Attorney for this District, to show cause why the prayer in the petition should not be granted, it is now, after hearing counsel for the petitioner and for said U. S. Marshal, ordered that said petition be denied.

By the Court:

CHARLES K. DARLING, *Clerk.*

A true record:

Attest:

CHARLES K. DARLING, *Clerk.*

15 *Petition for Appeal of Warren B. Wheeler.*

(Filed April 22, 1912.)

Now comes the petitioner, Warren B. Wheeler, and conceiving himself aggrieved by the order of this Court entered on April 22nd, 1912, in the above entitled proceeding, dismissing the petitioner's petition for writ of habeas corpus, doth hereby appeal from said order of dismissal to the Supreme Court of the United States, and he prays that his appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

By His Attorneys, WILLIAM G. THOMPSON,
ROMNEY SPRING.

Allowed:

FREDERIC DODGE.
U. S. District Judge, Distr. of Mass.
Apr. 22/12.

Assignment of Errors.

(Filed April 22, 1912.)

Now comes Warren B. Wheeler, the appellant in the above entitled case, and makes and files this his assignment of errors:

1. The District Court erred in adjudging the petitioner in contempt, and in committing him to the custody of the United States Marshal.

2. The District Court erred in making the order recited in the final decree that the petitioner produce said books and copies of letters and telegrams before said Grand Jury.

3. The District Court erred in ruling that ordering this petitioner to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the rights secured to him by the fourth amendment to the Constitution of the United States to be secure from unreasonable searches and seizures.

4. The District Court erred in ruling that ordering the petitioner to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to the petitioner by the fifth amendment to the Constitution of the United States not to be compelled in any criminal case to be a witness against himself.

16 5. The District Court erred in ruling that ordering the petitioner to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to this petitioner by the twelfth article of the Bill of Rights of the Constitution of the Commonwealth of Massachusetts not to be compelled to accuse or furnish evidence against himself.

6. The District Court erred in ruling that the legal effect of what had been done toward transferring to the petitioner and to Shaw as tenants in common the books and copies of letters and telegrams described in said subpœna, and towards dissolving said corporation Wheeler & Shaw, Inc., had not been to make said books and copies of letters and telegrams their private property in the sense that this petitioner could not legally be compelled to produce the same under said subpœna duces tecum before said Grand Jury.

By His Attorneys, WM. G. THOMPSON,
ROMNEY SPRING

Agreement as to Facts and Bond.

(Filed April 22, 1912.)

In the above entitled case, being an appeal from an order dismissing the petition of said Warren B. Wheeler for a writ of habeas corpus, it is hereby agreed that the allegations of fact in said petition are true; and that a certain supersedeas bond already given

by said Warren B. Wheeler on a writ of error taken out by him from the final order of said District Court adjudging him in contempt, referred to in his said petition, may be deemed a sufficient substitute for any bond on appeal in this case.

WARREN B. WHEELER,
By His Attorneys, WM. G. THOMPSON,
ROMNEY SPRING.
GUY MURCHIE,
By His Attorney, WM. H. GARLAND.

17 *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Guy Murchie, United States Marshal in and for the District of Massachusetts, in the City of Boston, in said District, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, D. C., on the twenty second day of May next, pursuant to an Appeal duly obtained from a decree of the District Court of the United States for the District of Massachusetts, wherein Warren B. Wheeler, a citizen of the United States and an inhabitant and citizen of the State of Massachusetts, and a resident of the City of Boston, in the District of Massachusetts, is appellant and you are appellee, to show cause, if any there be, why the said decree, entered against the said appel-ant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Frederic Dodge Judge of the District Court of the United States for the District of Massachusetts, this twenty fifth day of April, in the year of our Lord one thousand nine hundred and twelve.

FREDERIC DODGE,
U. S. District Judge.

18 *Acknowledgment of Service on Citation on Appeal.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

APRIL 26, 1912.

Due and sufficient service of the within citation is hereby acknowledged in behalf of the appellee.

WM. H. GARLAND,
Asst. United States Attorney, for Appellee.

19 *Transcript of Record of District Court.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

At a District Court of the United States, Begun and Holden at Boston, Within and for the District of Massachusetts, on the Third Tuesday of March, Being the Nineteenth Day of March, in the Year of Our Lord One Thousand Nine Hundred and Twelve.

Before the Honorable Clarence Hale, District Judge.

No. 266, Law Docket.

STILLMAN SHAW, Petitioner for Writ of Habeas Corpus,
v.
GUY MURCHIE, United States Marshal.

The Petition in this cause is filed in the clerk's office on the twenty second day of April, A. D. 1912, and is duly entered at the present March Term of this Court, A. D. 1912, and is in the words and figures following:

Petition for Writ of Habeas Corpus.

(Filed April 22, 1912.)

To the District Court of the United States in and for the District of Massachusetts:

Your petitioner, Stillman Shaw, respectfully shows:

I. That he is a citizen of the United States and an inhabitant and citizen of the State of Massachusetts and a resident of the City of Newton in the District of Massachusetts.

II. That your petitioner is now actually imprisoned and restrained of his liberty and detained by color of the authority of the United States in the custody of Guy Murchie, United States Marshal in and for the District of Massachusetts, to wit, in the City of Boston in said District.

III. That the sole claim or authority by virtue of which the said Guy Murchie, Marshal as aforesaid, so restrains and detains
20 your petitioner, is a commitment in writing, in due form, made in pursuance of an order of this Court made and entered at a stated term thereof held at the Post-Office Building in said City of Boston, on the 18th day of April, 1912. A copy of said order is hereto annexed and marked Exhibit A. A copy of the findings of fact by this Court referred to in said order is hereto annexed and marked Exhibit B.

IV. That said last mentioned order was made and based solely and exclusively upon a certain petition for attachment for contempt upon complaint of the Grand Jurors for said District of Massachu-

setts against your petitioner, upon the sworn answer of your petitioner thereto and upon the findings of fact therein made and herein before referred to. A copy of said petition, with copies of the subpœna, minutes of the Grand Jury and paper annexed thereto are hereto annexed, made part hereof and marked Exhibit C. A copy of said sworn answer is hereto annexed, made part hereof and marked Exhibit D.

V. That your petitioner's imprisonment and restraint are without authority of law whatsoever and in violation of his rights, privileges and immunities under the Constitution and laws of the United States and under the Constitution of the Commonwealth of Massachusetts, for the following reasons.

(*a*) This Court was without jurisdiction to entertain any charge or charges of contempt against your petitioner, or to act or proceed in any manner in the premises and in the matter of said petition of said Grand Jury; among other reasons being the reason appearing in said findings of fact, and elsewhere of record, that your petitioner having requested to be sworn when he appeared before the Grand Jury for the purpose of explaining why he did not produce the books and copies of letters and telegrams referred to in said petition, the oath which he requested was refused.

(*b*) Because the order of this Court requiring your petitioner to produce said books and copies of letters and telegrams before said Grand Jury, as required by said subpœna duces tecum, was a violation of the rights secured to your petitioner by the Fourth Amendment to the Constitution of the United States to be exempt from unreasonable searches and seizures, and by the Fifth Amendment to the Constitution of the United States not to be compelled to
21 be a witness against himself in any criminal case, and by the Twelfth Article of the Bill of Rights of the Constitution of Massachusetts not to be compelled to accuse or furnish evidence against himself, all of which rights were duly and repeatedly asserted and claimed by your petitioner, as appears by said final order and otherwise.

(*c*) Because all the books and copies of letters and telegrams referred to in said subpœna and in said petition were the sole, individual and private property of your petitioner as tenant in common with one Warren B. Wheeler, and neither the title, possession nor custody of the same were in said corporation, Wheeler & Shaw Inc., or in your petitioner as an officer or agent of said corporation.

VI. Your petitioner is advised by counsel and verily believes that for the reasons above stated the order adjudging him guilty of contempt, and his commitment pursuant to said order to the custody of said Marshal, were without legal right, authority or jurisdiction of any kind and are utterly void and ineffectual, and that his detention and imprisonment thereunder are in violation of the Constitution of the United States and of the Constitution of the Commonwealth of Massachusetts and of his rights, privileges and immunities thereunder.

Wherefore your petitioner prays that a writ of habeas corpus may issue, directed to said Guy Murchie, Esq., Marshal as aforesaid, or

to any of his Deputies, requiring him or them to bring and have your petitioner before this court, at a time to be by it determined; together with the true cause of his detention, to the end that due inquiry may be had in the premises and that this Court may proceed in a summary way to determine the facts of the case in that regard and the legality of your petitioner's imprisonment, restraint and detention, and thereupon to dispose of your petitioner as law and justice require.

Dated at the City of Boston, on the twenty second day of April, 1912.

STILLMAN SHAW.

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

Stillman Shaw, being duly sworn, deposes and says that he is the petitioner above named; that he has read the foregoing petition and knows the contents thereof and that the same is true of his own knowledge.

Sworn to, before me, this twenty second day of April, 1912.

GEORGE EVERETT KIMBALL,
Notary Public.

22 (Memorandum: By direction of counsel, copies of Exhibits, referred to in the foregoing Petition as annexed and marked respectively, Exhibit A.,—order adjudging defendant in contempt in case #341 Eq., U. S., Pet'r, v. Stillman Shaw—Exhibit B.,—findings of fact in #341 Eq.,—Exhibit C.,—comprising pet'n for attachment for contempt, copy of subpœna, minutes of the Grand Jury and papers annexed thereto, all entered in #341 Eq.,—Exhibit D.,—Answer of Stillman Shaw to Pet'n for Attachment for Contempt in #341 Eq.,—are here omitted (with the exception of the following Questions and Answers, part of Exhibit C.), as they are the same as the Exhibits in No. 265, Law, but for the insertion of the name of defendant Shaw in lieu of defendant Wheeler, and will be found on pages 4 to 13 of this record. CHARLES K. DARLING, *Clerk.*)

Questions and Answers.

(Part of Exhibit C.)

Q. Were you this morning served with a subpœna to produce before the Grand Jury books and papers of Wheeler & Shaw?

A. I have a statement (?) in my pocket to that effect.

Q. You understand to what I refer?

A. Yes, sir.

Q. Have you such books in your possession?

A. Before answering that I should like to be sworn for the purpose of presenting my reasons for not having any books or papers with me.

Q. The question I ask is whether you have them in your possession?

A. I decline to answer.

Q. You decline to say whether you have such books and papers in your possession?

A. Yes, sir.

Q. Do I understand you to say that you want to be sworn?

A. I want to be sworn for the purpose of stating my reasons for not having the books with me.

Q. The question is whether you will produce them or not?

A. I shall have to decline to answer.

Mr. GARLAND: I leave the matter to you, Mr. Foreman, whether under the circumstances he can answer the questions you may ask him now without being sworn?

Q. If I quote you correctly, you say that you would like to be sworn for the purpose of answering why you decline to answer that question. Will you produce the books and papers referred to in the subpœna?

A. I shall have to decline to answer.

Q. In order that there may be no mistake, Mr. Shaw, in regard to your position, I understand you to say that you decline to produce before the Grand Jury the books and papers referred to in the subpœna?

A. It was not what I intended to say. What I intended to say was I would like to be sworn for the one purpose of explain-
23 ing my reasons for not having any books or papers with me today.

Q. Can't you state this without being sworn?

A. I have asked to have you swear me in order that I may give my reasons.

Q. Is this statement similar to that presented by Mr. Wheeler?

A. Yes, sir. I will leave it for the Grand Jury.

I hereby certify that the above is a correct transcript of the questions and answers propounded to the above Stillman Shaw before the Grand Jury this 12th day of April, 1912, and a copy of statement referred to annexed.

(Signed) FRANKLIN M. ERLANBACH,
Clerk, Grand Jury.

24 On the same day, this cause is set down for hearing upon said petition and is fully heard by the Court, the Honorable Frederic Dodge, District Judge, sitting, and the following Final Order is entered, denying petition:

Final Order.

April 22, 1912.

DODGE, *J.*:

Upon the above entitled petition, Guy Murchie, Esq., U. S. Marshal in and for this District, having appeared by William H. Garland, Esq., Assistant U. S. Attorney for this District, to show cause why the prayer in the petition should not be granted, it is now, after

hearing counsel for the petitioner and for said U. S. Marshal, ordered that said petition be denied.

By the Court:

CHARLES K. DARLING, *Clerk.*

A true record:
Attest:

CHARLES K. DARLING, *Clerk.*

25 *Petition for Appeal of Stillman Shaw.*

(Filed April 22, 1912.)

Now comes the petitioner Stillman Shaw and conceiving himself aggrieved by the order of this Court entered on April 22nd, 1912, in the above entitled proceeding, dismissing the petitioner's petition for writ of habeas corpus, doth hereby appeal from said order of dismissal to the Supreme Court of the United States, and he prays that his appeal may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

By His Attorneys, WILLIAM G. THOMPSON,
ROMNEY SPRING.

Allowed:

FREDERIC DODGE,
U. S. Dist. Judge.

April 22/12.

Assignment of Errors.

(Filed April 22, 1912.)

Now comes Stillman Shaw, the appellant in the above entitled case, and makes and files this his assignment of errors:

1. The District Court erred in adjudging the petitioner in contempt, and in committing him to the custody of the United States Marshal.

2. The District Court erred in making the order recited in the final decree that the petitioner produce said books and copies of letters and telegrams before said Grand Jury.

3. The District Court erred in ruling that ordering this petitioner to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the rights secured to him by the fourth amendment to the Constitution of the United States to be secure from unreasonable searches and seizures.

4. The District Court erred in ruling that ordering the petitioner to produce before said Grand Jury the books and copies of letters and telegrams described in said subpœna did not violate the right secured to the petitioner by the fifth amendment to the Constitution

of the United States not to be compelled in any criminal case to be a witness against himself.

26 5. The District Court erred in ruling that ordering the petitioner to produce before said Grand Judy the books and copies of letters and telegrams described in said subpœna did not violate the right secured to this petitioner by the twelfth article of the Bill of Rights of the Constitution of the Commonwealth of Massachusetts not to be compelled to accuse or furnish evidence against himself.

6. The District Court erred in ruling that the legal effect of what had been done toward transferring to the petitioner and to Wheeler as tenants in common the books and copies of letters and telegrams described in said subpœna, and towards dissolving said corporation Wheeler & Shaw, Inc., had not been to make said books and copies of letters and telegrams their private property in the sense that this petitioner could not legally be compelled to produce the same under said subpœna duces tecum before said Grand Jury.

By His Attorneys, WM. G. THOMPSON,
ROMNEY SPRING.

Agreement as to Facts and Bond.

(Filed April 22, 1912.)

(MEMORANDUM.—By direction of counsel, this Agreement is here omitted, as it is the same, with the exception of the insertion of the name of Stillman Shaw in place of that of Warren B. Wheeler, as the one already copied on page 16 of this record.

CHARLES K. DARLING, *Clerk.*)

27 *Citation on Appeal.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to Guy Murchie, United States Marshal in and for the District of Massachusetts, in the City of Boston, in said District, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, in the city of Washington, D. C., on the twenty-second day of May next, pursuant to an Appeal duly obtained from a decree of the District Court of the United States for the District of Massachusetts, wherein Stillman Shaw, a citizen of the United States and an inhabitant and citizen of the State of Massachusetts and a resident of the City of Newton, in the District of Massachusetts, is appellant and you are appellee, to show cause, if any there be, why the said decree, entered against the said appel-ant, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Frederic Dodge, Judge of the District Court of the United States for the District of Massachusetts, this twenty-fifth day of April, in the year of our Lord one thousand nine hundred and twelve.

FREDERIC DODGE,
U. S. District Judge.

28 *Acknowledgment of Service on Citation on Appeal.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

APRIL 26, 1912.

Due and sufficient service of the within citation is hereby acknowledged in behalf of the appellee.

WM. H. GARLAND,
Ass't United States Attorney, for Appellee.

29 *Stipulation of Counsel as to Record.*

(Filed May 13, 1912.)

No. 265. Law.

WARREN B. WHEELER, Petitioner for Writ of Habeas Corpus,
v.
GUY MURCHIE, United States Marshal.

No. 266. Law.

STILLMAN SHAW, Petitioner for Writ of Habeas Corpus,
v.
GUY MURCHIE, United States Marshal.

It is hereby stipulated and agreed between counsel for both parties that the Transcript of Record in the cases entitled, No. 265 Law, Warren B. Wheeler, Petitioner for Writ of Habeas Corpus, v. Guy Murchie, United States Marshal, and No. 266 Law, Stillman Shaw, Petitioner for Writ of Habeas Corpus, v. Guy Murchie, United States Marshal, the causes of action and the pleadings being substantially identical, may be transmitted to the United States Supreme Court under one cover, and that No. 265 Law may be copied in full, but that No. 266 Law may be shortened by making references only to papers which are the same as are those in No. 265 Law and which have been therein set out in full.

WILLIAM G. THOMPSON,
ROMNEY SPRING,
Attorneys for Petitioners.
WM. H. GARLAND,
Attorney for Respondent.

30 *Clerk's Certificate.*

UNITED STATES OF AMERICA,
District of Massachusetts, ss:

I, Charles K. Darling, Clerk of the District Court of the United States, within and for the District of Massachusetts, certify that the foregoing are true copies of the records in the causes entitled, No. 265, Law Docket, Warren B. Wheeler, Petitioner for Writ of Habeas Corpus, v. Guy Murchie, United States Marshal, and No. 266, Law Docket, Stillman Shaw, Petitioner for Writ of Habeas Corpus, v. Guy Murchie, United States Marshal, in said District Court determined, the Petitions for Appeal, the Assignments of Errors, the Agreements as to Facts and Bonds, the Stipulation of Counsel as to Record, and also the original Citations issued upon the appeals of the petitioners, with Acknowledgments of Service thereon.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, at Boston, in said District, this fifteenth day of May, A. D. 1912.

[Seal of the District Court, Massachusetts.]

CHARLES K. DARLING, *Clerk.*

Endorsed on cover: File No. 23,226. Massachusetts D. C. U. S. Term No. 660. Warren B. Wheeler, appellant, vs. Guy Murchie, United States marshal in and for the district of Massachusetts. File No. 23,227. Term No. 661. Stillman Shaw, appellant, vs. Guy Murchie, United States Marshal in and for the district of Massachusetts. Filed May 29th, 1912. File Nos. 23,226 and 23,227.

21

Nos. 658, 659, 660, 661.

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

WARREN B. WHEELER, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.

STILLMAN SHAW, PLAINTIFF IN ERROR,
v.
THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

WARREN B. WHEELER, APPELLANT,
v.
GUY MURCHIE, UNITED STATES MARSHAL, ETC.

STILLMAN SHAW, APPELLANT,
v.
GUY MURCHIE, UNITED STATES MARSHAL, ETC.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

MOTION TO AFFIRM.

WASHINGTON: GOVERNMENT PRINTING OFFICE: 1912

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

WARREN B. WHEELER, PLAINTIFF IN error, *v.* THE UNITED STATES. } No. 658.

STILLMAN SHAW, PLAINTIFF IN ERROR, *v.* THE UNITED STATES. } No. 659.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

WARREN B. WHEELER, APPELLANT, *v.* GUY MURCHIE, UNITED STATES Marshal, etc. } No. 660.

STILLMAN SHAW, APPELLANT, *v.* GUY MURCHIE, UNITED STATES Marshal, etc. } No. 661.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

MOTION TO AFFIRM.

The Solicitor General, on behalf of the United States, moves the court to affirm the judgments of the District Court in all these cases.

61956—12

REASONS FOR MOTION.

These cases are governed by *Wilson* v. *The United States* (221 U. S., 361), and these appeals, it is submitted, were prosecuted solely for the purpose of delay and to hinder the Government in the procurement of indictments against appellants for offenses against the laws of the United States, as well as to hamper the prosecutions against them. The several judgments should therefore be affirmed. (See Rule 6, paragraph 5, of this court.)

STATEMENT OF CASES.

In Nos. 658 and 659 plaintiffs in error were committed for contempt by the District Court of the United States for the District of Massachusetts (R., 9, 10, 20, 21) for refusing to produce before the Federal grand jury certain books and records of Wheeler and Shaw, Inc., a corporation organized under the laws of Massachusetts, in compliance with a subpoena *duces tecum* issued to the said Wilson and Shaw, Inc. (R., 3, 17). Upon the order of commitment they have sued out these writs of error, assigning as error that the order to produce said books and records of Wheeler and Shaw, Inc., violated the rights secured to them by the Fourth and Fifth Amendments of the Constitution of the United States.

In Nos. 660 and 661 the same parties, after being committed for contempt for the reasons above stated, petitioned the court for a writ of habeas corpus, which, after hearing, was denied. They then appealed to this court, likewise assigning as error that the order

requiring them to produce the books and records of Wheeler and Shaw, Inc., and the commitment for contempt based on their refusal to comply with said order, violated the rights secured to them by the Fourth and Fifth Amendments of the Constitution of the United States.

ARGUMENT.

The manner in which it is attempted to distinguish these cases from the *Wilson* case appears from the findings of fact made by the District Court (Rec., Nos. 658 and 659, pp. 10, 21), where it is stated *inter alia:*

> 2. The corporation mentioned in the statute of the Commonwealth of Massachusetts which took effect on March 25, 1912, being statute 1912, chapter 313, and therein described by the words "Wheeler and Shaw, Inc.," is the same corporation that is mentioned in said subpœna.
>
> * * * * *
>
> 4. Sometime in the month of April, 1911, said corporation Wheeler & Shaw, Inc., ceased to do business, and shortly afterwards the legal title and possession of all the books and papers of said corporation then belonging to it, including all the books and copies of letters and telegrams described in the subpœna, were lawfully transferred to the defendant and to one Stillman Shaw as tenants in common, and have ever since remained in the defendant and said Shaw. Prior to the time when said statute of 1912, chap. 313, took effect, the defendant was the treasurer of said

> corporation, and said Shaw was the president thereof, and neither the defendant nor said Shaw has ever resigned his said office in said corporation.

It is further stated (Rec., Nos. 658, 659, p. 8), and may be assumed here, that the law of Massachusetts referred to in finding 2 was one dissolving the corporation of Wheeler and Shaw, Inc., and annulling its charter.

It is submitted that, as the District Court held (Rec. No. 658, 659, pp. 10, 12), the facts stated in the above findings form no valid ground of distinction between the cases at bar and the *Wilson* case. The proper test to be applied to a case of this character is not whether the bare "legal title and possession" of specific books and records is in the corporation or not, nor whether the corporation as an entity capable of holding title and possession still exists or not. *It is the nature of the contents of the books and records themselves.* If they be records of corporate action, containing accounts of corporate transactions, they are *corporate* books and records *for the purposes of testimony*, whoever, at any particular time, may chance to have the legal title to or possession of them. No transfer of them can rid them of this essential quality nor change the nature of their contents from corporate to private; nor does the dissolution of the corporation dissolve the records of corporate action as with an acid. They still, as a matter of fact, tell their story of the doings of the corporation, and as long as they do so, grand juries lawfully assembled are

entitled in proper proceedings to have that story from them. In the *Wilson* case this court said (221 U. S., 379, 380):

> We come then to the broader contention of the appellant, thus stated in the argument of his counsel: "An officer of a corporation who actually holds the physical possession, custody, and control of books or papers of the corporation which he is required by a subpoena *duces tecum* to produce, is entitled to the same protection against exposing the contents thereof which would tend to incriminate him, as if the books and papers were absolutely his own." That is, the power of the courts to require their production depends not upon their character as corporate books and the duty of the corporation to submit them to examination, but upon the particular custody in which they may be found. If they are in the actual custody of an officer whose criminal conduct they would disclose, then, as this argument would have it, his possession must be deemed inviolable, and, maintaining the absolute control which alone will insure protection from their being used against him in a criminal proceeding, he may defy the authority of the corporation whose officer or fiduciary he is and assert against the visitatorial power of the State, and the authority of the Government in enforcing its laws, an impassable barrier.
>
> But the physical custody of incriminating documents does not of itself protect the custodian against their compulsory production. The question still remains with respect to the

> nature of the documents and the capacity in which they are held. It may yet appear that they are of a character which subjects them to the scrutiny demanded and that the custodian has voluntarily assumed a duty which overrides his claim of privilege.

This language, it is submitted, makes the *character* of the books and records the determining factor, and dismisses the matter of possession at any particular moment; and if possession, then also title, since one is simply a base form or source of the other. Any other reasoning would entirely destroy the value of the decision in the *Wilson* case. All crimes by the officers of corporations would be followed, if the interest of the criminals required it, by the dissolution of the corporation and the transfer of incriminating books and records to the officers "as tenants in common."

There is nothing in the *Matter of Harris*, 221 U. S., 274, inconsistent with this view. Whatever implication is to be drawn from the opinion of the court in that case, it is to be observed that it dealt with the *books of the bankrupt*. Here the issue is as to the right of the grand jury to inspect the *books of the corporation*, which are none the less records of the corporation because they are in the possession of its former officers. The latter may be entitled to the *possession* of the books as against all others; but because the books are, and must ever remain, the *record books of the corporation*, the court, in appropriate judicial proceedings, must necessarily have the right to

compel their production in order that the acts of the corporation may be investigated. The books are not the record of the personal transactions of Wheeler and Shaw, but of the doings of the corporation; hence to compel their production for testimonial purposes is not an invasion of their individual privacy, which the Constitution forbids. (*Boyd* v. *United States*, 116 U. S., 616.) It is not compelling the former officers of the corporation to produce their *private* books and papers, within the meaning of that decision.

It is respectfully submitted that the judgments of the court below should be affirmed.

WILLIAM MARSHALL BULLITT,
Solicitor General.

WILLIAM R. HARR,
Assistant Attorney General.

○

In the Supreme Court of the United States.

OCTOBER TERM, 1912.

WARREN B. WHEELER, PLAINTIFF IN error, *v.* THE UNITED STATES.	No. 658.
STILLMAN SHAW, PLAINTIFF IN ERROR, *v.* THE UNITED STATES.	No. 659.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

WARREN B. WHEELER, APPELLANT, *v.* GUY MURCHIE, UNITED STATES Marshal, etc.	No. 660.
STILLMAN SHAW, APPPELLANT, *v.* GUY MURCHIE, UNITED STATES Marshal, etc.	No. 661.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

SUPPLEMENTAL AND REPLY BRIEF FOR THE UNITED STATES AND THE UNITED STATES MARSHAL.

I.

THE ALLEGED DEFECT IN THE FORM OF THE SUBPŒNA, NOT HAVING BEEN RAISED BELOW, IS NOT OPEN TO QUESTION HERE.

The sufficiency of the subpœna, because addressed to the corporation, which had been dissolved, and

not to Wheeler and Shaw individually, was not questioned in the proceedings below. The defense in each case, as appears from the respective findings of fact made by the court, and the bill of exceptions therein (R., No. 658, 659, pp. 10–12; No. 660, 661, pp. 5–11), shows that the sole defense made to the production of the books was the privilege of the defendants under the Fourth and Fifth Amendments to the Federal Constitution and the Massachusetts Bill of Rights.

That no point of the kind now urged was sought to be made below also appears from the following statement of Warren B. Wheeler to the grand jury (R., No. 659, p. 6; No. 660, p. 9):

> Third. Whether addressed to said corporation or to me personally, I am advised that said subpœna violates the rights secured to me by the fifth amendment to the Constitution of the United States not to be a witness against myself in any criminal case.

In his motion to dismiss the petition for attachment for contempt (R., No. 659, pp. 6–7) Wheeler made no claim that the subpœna was defective because addressed to the corporation. In short, the record shows that the defendants were in court and refused to produce the books and papers called for by the subpœna simply on the ground of privilege.

Moreover, even if the subpœna were defective in form, that would not go to the power of the court to commit or remand the appellants. In *Hale* v.

Henkel (201 U. S., 43, 76), where this court held that the subpœna was "far too sweeping in its tenor to be regarded as reasonable," it was held (p. 77) that "this objection to the subpœna does not go to the validity of the order remanding the petitioner, which is, therefore, affirmed." To the same effect is *Ex parte Hedden* (90 Pac. Rep. 737, 742, 743).

The objection made in Wheeler's statement to the grand jury that the subpœna was too broad in its scope is disposed of by *Wilson* v. *United States* (221 U. S., 361, 376), as the subpœna here follows the form there sustained. This objection was apparently abandoned below and is not pressed here. Moreover, as above stated, *Hale* v. *Henkel*, *supra*, holds that a defect of this kind does not go to the validity of the court's order.

II.

AS TO THE CLAIM OF PRIVILEGE UNDER THE FOURTH AND FIFTH AMENDMENTS.

1. The Fifth Amendment has no application because appellants were not called as witnesses.

The immunity granted by the Fifth Amendment that no person "shall be compelled in any criminal case to be a *witness* against himself," means *testimonial* compulsion. (Wigmore on Evidence, vol. 3, sec. 2263.)

Appellants were merely called upon to produce the books of the corporation; not to testify as to any facts concerning them, the subpœna containing no *ad testificandum* clause. The mere production of the books would not make them witnesses.

A subpœna *duces tecum* without the *ad testificandum* clause was sustained in the *Wilson* case (221 U. S., 372), where it was held that it was not necesaary "to have the person producing the documents sworn as a witness."

It will be observed that in *Boyd* v. *United States* (116 U. S., 616) the order to produce the papers was held to be a violation of the provision of the Fourth Amendment against unreasonable searches and seizures. If the majority of the court had thought the Fifth Amendment applicable, it would have been unnecessary for them to consider the application of the Fourth Amendment.

A person who merely produces books and papers does not vouch for their contents, and when, as here, they are the records of a corporation and tell its story, not his, he is not even in effect made a witness against himself by being compelled to produce them.

2. The order to produce the books of the corporation was not an invasion of appellants' privacy within the meaning of the Fourth Amendment.

A corporation being the creature of the State, its acts are necessarily subject to the supervision of government. An individual can not defeat the exercise of this governmental power by merely acquiring title to the corporate books and papers. The transfer of title does not change the character of such documents as the records of the corporation.

The Fourth Amendment, as construed in *Boyd* v. *United States* (116 U. S., 616), merely protects a person against an invasion of his *privacy*, when such in-

vasion will operate to incriminate him. But it is no invasion of a man's *privacy* to compel him to produce the books and papers of a corporation, whose acts, as above stated, are necessarily subject to investigation by the State. So, in the *Wilson* case, referring to the books and papers of the corporation there concerned, the court said (221 U. S., 374):

> * * * It may yet appear that they are of a character which subjects them to the scrutiny demanded and that the custodian has voluntarily assumed a duty which overrides his claim of privilege. This was clearly implied in the *Boyd case*, where the fact that the papers involved were the *private* papers of the claimant was constantly emphasized.

The contention that it will be an unconstitutional invasion of the *privacy* of an officer or former officer of a corporation for the State to compel him to produce the books of the corporation is manifestly absurd.

The case at bar is sought to be distinguished from the *Wilson* case on the ground that the corporation has been dissolved and the legal title to its books and papers is in the defendants. But if the *character* of the books and papers is the determinative factor, as the *Wilson* case plainly holds, these differences are immaterial. While the corporation may be dissolved, its records are still subject to examination for any purpose connected with the winding up of its affairs (Laws of Massachusetts, 1903, chap. 437, sec. 52). Moreover, the act of March 25, 1912 (Acts, Mass., 1912, chap. 313, p. 210, 232), which

dissolved Wheeler & Shaw (Inc.), along with about five hundred other corporations, provided (sec. 2) that—

> nothing in this act shall be construed to affect any suit now pending by or against any corporation mentioned in the first section hereof, nor any suit now pending or hereafter brought for any liability now existing against the stockholders or officers of any such corporation.

The court below was asked by appellants to take judicial notice of these State statutes. (Rec., Nos. 658, 659, p. 7.)

Whether the liability mentioned in the Massachusetts act of 1912 includes criminal liability is immaterial. Clearly, the State reserved the right to inquire into the acts of the corporation for the purpose of determining whether it or its officers or agents had violated its criminal laws and clearly, also, under the decision in the *Wilson* case, the United States had like authority with respect to the enforcement of its own laws.

The possession of legal title to the corporate books and papers by Wheeler and Shaw does not affect the *character* of those documents. They are none the less the records of the corporation because the legal title thereto has passed to Wheeler and Shaw as individuals.

It is true that in the *Wilson* case the officer was attempting to withhold the corporate records against the wishes of the corporate officers. But the decision rests principally upon the character of the books as cor-

porate records, the fact that the possession of Wilson was wrongful being merely an added reason why he should not be allowed to withhold them.

Judge Hand, holding the District Court for the Southern District of New York, so interpreted the *Wilson* case in *In re Grant* (198 Fed. 708), in which case also the possession of the party subpœnaed to produce the corporate books was lawful. He said:

> In Wilson *v.* United States (221 U. S., 361, 31 Sup. Ct., 538, 55 L. Ed., 771), Wilson originally had custody of the corporate records as president; but before the second presentment of the grand jury the directors had demanded them of him, and he had refused to deliver them. Therefore the first subpœna went before the demand, the second after, but the court did not distinguish. Now with the first I have here no concern, because, while Wilson did not maintain any possession against the corporation, his custody was the corporation's, and the only question was whether he could protect himself from self-incrimination through that fact. That too was *Dreier's* case (221 U. S., 394; 31 Sup. Ct., 550; 55 L. Ed., 784), which was decided at the same time as Wilson's. However, after Wilson assumed personal possession of the books, a different question arose. The court might have said that his possession would be respected as privileged, whether as against the corporation it was lawful or not, and that, until the corporation had got back the books from Wilson's wrongful possession, no writ should go. That would have been

to deny the privilege to the corporation only, but to allow it to the individual no matter what was the original character of the books. Of course, such a result would have been most undesirable in practice, and yet I think that it would necessarily be the result if the papers had not been public in character. For instance, suppose that A, knowing that B has papers which would incriminate him, gets wrongful possession of them from B, whom they do not incriminate. If B is content, and leaves A in possession, I do not understand that it would be any answer whatever to A to say: "You can not keep these back, because you came by them wrongfully, or at least you have no right to them now." All the law considers is whether A has got possession in fact, and whether the documents actually will tend to incriminate him. To get them in evidence the law would have to force him to bring them out of a possession which is good enough against any one but B. Certainly I can find nothing in the books which suggests such a distinction, and it contradicts the whole history of the matter. For the privilege runs along side by side with the power to compel production, and that power depends only upon serving the actual possessor. There are cases to be sure where one having custody is not required to produce, but it is only because his custody is so subordinate as not to justify his meddling with documents even to bring them to court. Certainly, a full possessor of the documents is always subject to subpœna, whether his possession is lawful or unlawful, and regardless of ownership.

> Now the Supreme Court paid no attention whatever to this distinction, *for they put the decision upon the quasi public character of the record when it was originally made*, which, as I read it, subjected it as a document to production in anyone's hands, whether it hurt him or not to discover it. That certainly is the burden of Mr. Justice Hughes' opinion, and, for the reasons I have given, I think it is the logic of the decision. If so, the question of legal title does not matter; indeed, this case shows how little it should. For the respondent concedes that Burlingame would have had to produce these books during the years 1908 and 1909, merely because he had no legal title, though he owned all the stock; but he insists that the passage of title makes the whole difference. Surely that is very dry straw.

This case is now before this court (*Walter B. Grant and E. E. Burlingame, appellants,* v. *United States,* No. 831) having been recently placed on the summary docket and advanced for hearing on January 6, 1913.

Legal title is immaterial upon a subpoena to produce books or papers, because the court is entitled to them as against anyone for the time being, and the proceeding is not one to try title. The person subpoenaed can not refuse to produce the papers sought if he has not title, and if he has title as well as possession, he is no better able to respond.

The question whether the production of books and papers may be compelled, therefore, necessarily goes back to the *character* of the documents sought.

3. The rule, both at law and in equity, that a person can not be compelled to produce books and papers to discover matters which may incriminate him, is subject to the qualification here contended for.

Section 724 of the Revised Statutes provides that—

> In the trial of actions at law, the courts of the United States may, on motion and due notice thereof, require the parties to produce books or writings in their possession or power which contain evidence pertinent to the issue, *in cases and under circumstances where they might be compelled to produce the same by the ordinary rules of proceeding in chancery.*

It is well settled that the rule in equity that "no man need discover matters tending to criminate himself, or to expose him to a penalty or forfeiture," is subject to an exception in respect to frauds and also where fiduciary relations exist. (Adams' Equity, 8th ed., p. 4.)

In *State* v. *Maury* (2 Del. Ch. Rep., 141, 158) it was held that a court of equity had jurisdiction to compel the managers of a State lottery to make an accounting, although the matters disclosed might incriminate them, the court following *Green* v. *Weaver* (1 Sim. Rep., 404; 2 Eng. Ch. Rep.), to the effect that persons occupying places of trust and confidence must be ready at all times to render an accounting.

Under the principle just stated, an executor or trustee could be compelled to produce his books of account, regardless of the fact that the title thereto might be in him. The books may belong to the

trustee, but the story which they contain is one that the State is entitled to know.

So, with respect to the books and papers of a corporation. A corporation and its officers may fairly be said to occupy a relation of trust and confidence to the State which created them, and therefore, by analogy to the principle of equity just stated, a State is entitled to a discovery of their acts in order to know whether they have kept faith with it or have violated its laws.

It may also be said to be a fraud upon the State for an officer of a corporation to attempt to defeat its right to investigate the acts of its creature by having the books and papers of the corporation transferred to him.

4. Sound public policy forbids the extension of the privilege against self-incrimination to a case involving the production of corporate records.

Wigmore thinks the privilege should be maintained, but that it "should be kept within limits the strictest possible." (Vol. 3, sec. 2251, p. 3102.)

The privilege is for the protection of the innocent. Will any such purpose be subserved by extending it to the defendants in this case? What invasion of their *privacy* will they sustain by having the records of the corporation examined by the Government?

Wheeler and Shaw say the corporation is dissolved—dead. What do they fear, then—a voice from the grave? And if that voice is permitted to speak, who would testify? Wheeler and Shaw, or the corporation?

The corporation may be dissolved, but its acts survive, and no veil should be permitted to be thrown around them. If it has violated the laws of the land, may that not be inquired into? By what right or justice can persons be permitted to commit crime through the agency of a corporation, and then, by having it dissolved and obtaining possession of its books, obstruct an inquiry into their acts? If such a privilege were maintained, would it not indeed be "justice *tampered* with mercy?"

Both on reason and authority, therefore, the claim of privilege under the Fourth and Fifth Amendments, as asserted in these cases, should be denied, and the judgments of the lower court affirmed.

WILLIAM R. HARR,
Assistant Attorney General.

○

23

NOV 4 191
JAMES H. McKE

Nos. 658, 659, 660, 661

In the Supreme Court of the United States

OCTOBER TERM, 1912

WARREN B. WHEELER, PLAINTIFF IN ERROR
v.
THE UNITED STATES

STILLMAN SHAW, PLAINTIFF IN ERROR
v.
THE UNITED STATES

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

WARREN B. WHEELER, APPELLANT
v.
GUY MURCHIE, UNITED STATES MARSHAL, ETC.

STILLMAN SHAW, APPELLANT
v.
GUY MURCHIE, UNITED STATES MARSHAL, ETC.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS

BRIEF FOR WHEELER AND SHAW, PLAINTIFFS IN ERROR AND APPELLANTS, ON THE MOTION OF THE UNITED STATES TO AFFIRM

NATHAN MATTHEWS

WILLIAM G. THOMPSON,
ROMNEY SPRING,
Of Counsel

BOSTON: PRESS OF GEO. H. ELLIS CO.
1912

Nos. 658, 659, 660, 661.

In the Supreme Court of the United States

OCTOBER TERM, 1912.

WARREN B. WHEELER, PLAINTIFF IN ERROR

v.

THE UNITED STATES.

STILLMAN SHAW, PLAINTIFF IN ERROR

v.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

WARREN B. WHEELER, APPELLANT

v.

GUY MURCHIE, *United States Marshal, etc.*

STILLMAN SHAW, APPELLANT

v.

GUY MURCHIE, *United States Marshal, etc.*

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

BRIEF FOR WHEELER AND SHAW, PLAINTIFFS IN ERROR AND APPELLANTS, ON THE MOTION OF THE UNITED STATES TO AFFIRM.

STATEMENT OF THE CASES.

This is a motion to affirm two judgments and two final orders of the District Court of the United States for the District of Massachusetts. The motion is made under

Rule 6, paragraph 5, of this Court on the ground that it is manifest that the writs and appeals were taken for delay only, and, in the language of the brief for the United States, "to hinder the Government in the procurement of indictments against appellants for offenses against the laws of the United States, as well as to hamper the prosecutions against them." No question of the jurisdiction of this Court is raised.

The plaintiffs in error and appellants deny that it is either manifest or the fact that their cases have been brought here for delay or for any other improper purpose. On the contrary, it is, they believe, manifest that the judgments of contempt entered against them and the commitment thereon were without authority of law and in plain violation of their constitutional rights to be exempt from compulsory self-incrimination and from unreasonable searches and seizures and not to be deprived of their liberty without due process of law.

Both sets of cases are based upon the same facts, and present substantially the same questions of law. Unless otherwise stated, the references in this brief will be to the record in the writs of error Nos. 658 and 659.

No questions of fact have been at any stage of the cases in dispute. The material facts, as shown by the Bills of Exceptions (R. pp. 11, 21) and the Court's Findings of Fact (R. pp. 10, 21) are as follows: There was a Massachusetts corporation known as Wheeler and Shaw, Incorporated (R. p. 10). By a Massachusetts statute which took effect March 25, 1912 (Stat. 1912, Chap. 313), that corporation was dissolved, and its charter annulled (R. pp. 8, 10.—Government's Brief, p. 4). About one year earlier, namely, in "April, 1911, said corporation Wheeler & Shaw, Inc., ceased to do business, and shortly afterwards the legal title and possession of all the books and papers of said corporation then belonging to it, including all the books and copies of letters and telegrams described in (a certain

subpœna *duces tecum*) were lawfully transferred to the defendant (Warren B. Wheeler) and to one Stillman Shaw as tenants in common, and have ever since remained in the defendant (Wheeler) and said Shaw" (Findings of Fact, R. p. 11). Shaw was the president of the corporation and Wheeler treasurer, and neither ever resigned his office (ib. R. p. 11).

On April 12, 1912, the Federal grand jury in Boston was investigating the question whether Wheeler and Shaw individually "by means of said corporation or otherwise had violated the Act of Congress of March 4, 1909, being 35 Stat. (Part I) Chap. 321, Sect. 215," which makes using the mails for a scheme to defraud a crime punishable by fine or imprisonment, or both (Bill of Exceptions, R. p. 12).

On that day a subpœna *duces tecum*, with no *ad testificandum* clause, was issued, summoning said *corporation* (*not* Wheeler or Shaw individually) to appear before the grand jury forthwith and produce certain cash books, ledgers, journals, other books of account, copies of letters and telegrams, whether signed by the corporation or "by its president or its treasurer" in its behalf, all being therein described as "*of said Wheeler and Shaw, Incorporated*" (R. pp. 3–4). This subpœna was at once served on Wheeler as "treasurer" and Shaw as "president" of the corporation (R. pp. 4, 18). Later on the same day Wheeler and Shaw both appeared before the grand jury, did not bring any of the books, letters, etc., mentioned in the subpœna, asked to be sworn for the single purpose of explaining why they had not brought anything, were refused the oath, declined to answer any except merely formal questions, but left with the grand jury unsworn papers addressed to the grand jury, and containing a statement of reasons for the non-production of the books and papers (R. pp. 10, 4–6).

On the next day (April 13, 1912) the grand jury filed in the District Court against each man a paper entitled "Petition for Attachment for Contempt" (R. p. 2). This

petition did not charge that a contempt had already been committed by the failure of Wheeler and Shaw on April 12 to produce anything under the subpœna, but prayed that they "be ordered by this Honorable Court to produce said books, copies of letters and telegrams, and upon a failure or refusal . . . to comply with said order that he be adjudged in contempt" (R. p. 3).

On this petition a summons to show cause why the prayer of the petitioner should not be granted, returnable April 16, 1912, was issued and served upon each of them (R. p. 6). They appeared, filed motions to dismiss, which were denied (R. pp. 6–7), and then filed sworn answers (R. p. 8).

Both cases were heard by Judge Dodge on April 16 (R. pp. 9, 20), on the grand jury's petition, summons to show cause, answers, and certain agreed facts, which were afterwards (April 22) stated in the form of findings of fact by the Court (R. pp. 9, 10).

At the close of the hearing the learned judge refused all of the requests for rulings of the plaintiffs in error, ruled that the case was governed by *United States* v. *Wilson*, 221 U. S. 361, saved their exceptions, and ordered them "to produce the books and papers as set forth in the subpœna to witness at 2 P.M., April 17, 1912" (R. p. 9). They then, renewing their statement of reasons, informed the Court that they would not comply with said order (R. pp. 9, 20). On April 18, 1912, a final order was entered in each case adjudging them in contempt and committing them to the custody of the Marshal "until by producing" before the grand jury "the books and copies of letters and telegrams described in said subpœna he shall cease to obstruct and impede the corporation known as Wheeler & Shaw, Inc., and described in said subpœna, from complying with said subpœna *duces tecum*, or otherwise purge himself from this contempt" (R. pp. 10, 21).

On these judgments Wheeler and Shaw sued out writs of error. On April 22 they also filed petitions for writs of

habeas corpus against the Marshal (Nos. 660, 661, pp. 1, 14). From the final orders entered April 22, 1912, denying said petitions (ib. pp. 11, 17–18), they have also appealed to this Court (ib. pp. 11, 18).

A brief statement of the precise nature of the constitutional questions presented by these cases, and of the way in which they arise, seems to be required. Wheeler and Shaw made certain objections to the action of the grand jury and other objections to the action of the Court. As no attempt was made to punish them for anything done or not done at their appearance before the grand jury, it is only their objections to the action of the Court that are now presented for consideration. This eliminates the first and second grounds in their motions to dismiss, to the denial of which they took exception (R. pp. 6–7, 11, 19–20), as well as the question presented by the denial by the Court of the ruling requested at the hearing concerning the effect of the Grand Jury's refusal to administer the oath (R. pp. 11, 21); for, although the grand jury refused to permit them to state their excuses under oath, and thus denied them a hearing, they subsequently got at the hearing in court the benefit of all the facts which they desired to state, by the Government's admission of the truth of their sworn answer, as well as by the agreement on the facts incorporated in the Court's findings.

The remaining objections all concern either the order of the Court that on April 17 they produce the books and papers, the judgment of contempt which followed the disobedience of that order, and the order of commitment to the custody of the Marshal (R. pp. 12, 21). The grand jury's petition and the order made thereon were expressly based upon the subpœna, and were an attempt to enforce it. The defendants objected to the first-mentioned order on the ground that it violated their rights under the Fifth Amendment to the Constitution of the United States not to be compelled in any criminal case to be witnesses against

themselves, and also their rights under the Fourth Amendment to be secure against unreasonable searches and seizures (R. pp. 9, 11, 12, 20-21). They also claimed that the order was in violation of the Twelfth Article of the Bill of Rights of the Constitution of the Commonwealth of Massachusetts. This last-mentioned contention will not at the present stage of the case be insisted upon.

To the judgment of contempt and to the order of commitment the defendants made objections and took exceptions (R. pp. 12, 21), based partly on the special ground set up in the fifth paragraph of their motion to dismiss (R. pp. 7, 19-20), that, as the subpœna imposed no legal obligation upon the corporation to produce any books or papers, they could not lawfully be punished for obstructing the corporation in the production of the papers, and partly on the Fifth Amendment generally. This amounted in effect to the claim that their conviction and punishment for contempt were a violation of their right under the Fifth Amendment not to be deprived of their liberty without due process of law.

The various requests for rulings and exceptions to the rulings of the Court shown in the bills of exceptions (R. pp. 11, 21) were attempts to present one or the other of these fundamental questions or some aspect of them. And the assignments of error (R. pp. 13-14, 22-23) cover all of the questions. For reasons already stated, the fourth assignment of error is waived, and the eighth will not be argued at this stage of the cases.

The position taken by the Government in its brief appears to render unnecessary the discussion of two questions which might otherwise be involved in the cases. Those questions are: first, whether the contents of the books and papers called for by the subpœna would, as a matter of fact, tend to criminate Wheeler and Shaw; and, secondly, the question of the possible materiality of the Massachusetts statute of 1903, Chap. 437, Sec. 52 (referred to in

the motions to dismiss—R. pp. 7, 19–21), which continues for a limited period, and solely for the purposes of winding up, the existence of corporations whose charter has been annulled by special act of the Legislature. The first question is eliminated by the refusal of the Court, against the objections and exceptions of the plaintiffs in error, to find one way or the other whether the production of the books and papers would tend to criminate them, and by the ruling of the Court, also made against objection and exception,

> "that it was immaterial whether the production of said books and copies of letters and telegrams before said Grand Jury as required by said subpœna would or would not tend to criminate the defendant(s)" (R. pp. 12, 21).

Also the Government, by reason of the statements in the first paragraph on page 2 of its brief, appears to be conclusively committed to the proposition that the contents of the books and papers called for would, if disclosed, tend to criminate the plaintiffs in error and appellants.

The second question is eliminated by the following statement on page 4 of the Government's brief:—

> "It is further stated (Record, Nos. 658, 659, p. 8) *and may be assumed here* [italics ours] that the law of Massachusetts referred to in finding 2 was one dissolving the corporation of Wheeler & Shaw, Inc., and annulling its charter."

This statement and the other statements on that page of the brief render it clear that the Government intends to take the position that both the ownership of the books and papers, and also the existence of the corporation, are entirely immaterial under the decision in *Wilson* v. *United States*, 221 U. S. 361.

That the Government was well advised in thus impliedly conceding the immateriality of the statute of 1903,

Chap. 437, Sec. 52, is apparent from an inspection of that statute, as well as from the following authorities:—

Crease v. *Babcock*, 23 Pick. 334, 346.
Richards v. *Attleboro Nat. Bank*, 148 Mass. 187, 191.

See also *Nat'l Bank* v. *Ins. Co.*, 104 U. S. 54, 74–75.

The position of the plaintiffs in error and appellants upon the remaining questions of law is expressed in the following propositions, which they will now endeavor to establish:—

I.

The orders of commitment and the imprisonment thereunder have deprived the plaintiffs in error and appellants of their liberty without due process of law.

II.

If, as is agreed, the books and papers described in the subpœna were the private property of the plaintiffs in error and appellants, then the Court's order requiring their production before the grand jury, and the judgments of contempt based upon the disobedience of that order, violated the right of each plaintiff in error and appellant under the Fifth Amendment not to be compelled in any criminal case to be a witness against himself, and the right of each under the Fourth Amendment to be exempt from unreasonable searches and seizures.

ARGUMENT.

I.

The orders of commitment and the imprisonment thereunder have deprived the plaintiffs in error and appellants of their liberty without due process of law.

A. The subpœna imposed no legal obligation on the corporation to produce the books and papers.

(*a*) Even if the corporation had had any sort of existence at the time the subpœna was issued, it would have been under no legal obligation to produce the books and papers therein described.

(1) It was agreed that nearly a year before the date of the subpœna the corporation had been lawfully divested of "the legal title and possession" of all the books and papers described in the subpœna (R. p. 11); and—

(2) A natural person who had neither the title nor possession of books and papers could not by any known form of procedure be put under a legal obligation to produce them.

Ballman v. *U. S.*, 200 U. S. 186, 194.

(3) The case of a corporation in the same situation is even stronger,—certainly no weaker.

(*b*) But the corporation was not on April 12, 1912, the date of the subpœna, subject either to this particular subpœna or to any subpœna requiring the production of books or papers before a grand jury.

(1) It is an agreed fact that the corporation had nearly a year earlier "ceased to do business" any-

where (R. p. 11). This is in direct contradiction of the description of the corporation in the subpœna as "doing business at Boston in said District" (R. p. 3), and shows that the subpœna was based upon an erroneous assumption of fact.

(2) And not a single one of the reasons stated by this Court in *Wilson* v. *United States*, ubi supra, as the basis of an obligation on the part of a private corporation to produce its books and papers (if it had any) in judicial proceedings, existed when this subpœna was issued. For it is an agreed fact that nineteen days before the issuance of the subpœna "the corporation was lawfully dissolved and its charter annulled" (R. pp. 8, 10—Government's brief, p. 4). The corporation had thus ceased to be subject to the state's visitatorial powers; and it had no longer any special privileges, or franchises, or right to do business as a corporation. These are the considerations emphasized in,

Hale v. *Henkel*, 201 U. S. 43, 74–75.

(3) For reasons stated in the introduction to this brief, the Government's position is such as to render it entirely unnecessary to anticipate or discuss any suggestion of a possible limitation by the Massachusetts statute of 1903, Chap. 437, Sec. 52, of the effect of Stat. 1912, Chap. 313 (R. pp. 8, 11), in annihilating the corporation, at least so far as capacity to respond to a subpœna *duces tecum* is concerned.

(*c*) And, if the obstacles already referred to were not in the way, the objection urged by both Wheeler and Shaw on the corporation's behalf (as well as on their own), both in the second paragraph of their letter to the grand jury (R. p. 6) and at the hearing before the Court (R. pp. 9, 11–12, 19, 21), would still be in-

superable; namely, that the description of the books and papers in the subpœna is so broad and sweeping as to constitute an unreasonable search under the Fourth Amendment.

(1) The subpœna called for all the corporation's books covering the period October 1, 1909, to January 1, 1911; and copies of all letters written by it or on its behalf during October, November, and December, 1909, and the entire year 1910 (R. pp. 3–4).

(2) This description falls outside the line of reasonable particularity.

Hale v. *Henkel*, 201 U. S. 43, 76–77.

B. But, if the subpœna imposed no legal obligation upon the corporation to produce any books and papers, then it imposed no legal obligation upon Wheeler and Shaw individually to do so.

(*a*) The only obligation imposed upon Wheeler and Shaw by the serving upon them of a summons addressed to the corporation was an obligation in their official capacity depending wholly upon the existence of an obligation on the part of the corporation itself to produce the books and papers.

(1) The summons ran directly to the corporation, and not to Wheeler and Shaw.

(2) The service, which was in terms expressed to have been made upon Wheeler and Shaw in their official capacity (R. p. 4) as officers of the corporation, was simply a method of enforcing the assumed obligation of the corporation, and not any obligation of Wheeler and Shaw personally.

Commissioners v. *Sellew*, 99 U. S. 624, 627.

The duty imposed upon them by the service was secondary, not primary. They were the mere physical agency by which alone the corporation could act, if it could act at all. If the corporation was under no obligation to produce the books, the human agent was under no obligation. They were punished (R. p. 10) not for failure to perform any affirmative personal obligation, but for interfering with the corporation in the performance of its supposed obligation.

(3) That in such a case the obligation of the individual served is derivative and secondary, and not individual and primary, is the very essence of the reasoning in,

Wilson v. *U. S.*, ubi supra, pp. 376, 381–382, 385.

Dreier v. *U. S.*, 221 U. S. 394.

Consolidated Rendering Co. v. *Vermont*, 207 U. S. 541.

Baltimore & Ohio R.R. v. *Int. Com. Comm.*, 221 U. S. 612, 622–623.

In *Wilson* v. *United States*, Mr. Justice Hughes said p. 385,—

> "He could assert no personal right to retain the corporate books against any demand of government *which the corporation was bound to recognize*" (italics ours).

(*b*) The fact that the distinction between the nature of the two possible obligations which a subpœna *duces tecum* may impose upon the individual upon whom it is served is sometimes blurred by addressing the subpœna to the individual, when what is sought are documents held by him in an official capacity, serves only

to sharpen the distinction when the subpœna is addressed, as here, to the corporation itself.

(1) In *Wilson* v. *United States*, at p. 374, Mr. Justice Hughes said,—

> "Where the documents of a corporation are sought, the practice has been to subpœna the officer who has them in his custody. But there would seem to be no reason why the subpœna *duces tecum* should not be directed to the corporation itself."

Other instances of this modern practice are,

In re American Sugar Refining Co., 178 Fed. 109.

In re Bornn Hat Co., 184 Fed. 506, 508.

In the American Sugar Refining Company case, *ubi supra*, Lacombe, J., said (p. 111),—

> "No doubt this is a wholly novel practice," etc.

The reason for the adoption of this practice is illustrated in

In re American Tobacco Co., 146 Fed. 557,

where the subpœna was addressed to an individual describing him as secretary of a corporation, and it was held that he could not be punished for contempt for not producing the books when it appeared as a fact that they were in the custody of another officer of the corporation, and that the individual summoned could not obtain them without a breach of the peace. Lacombe, J., suggested that a new summons issue, directed to the corporation itself, and that it be served upon the particular officer who had the books.

(2) If, as here, a man should happen to own and

possess corporation books in his individual capacity, and a subpœna should issue directed to him, requiring in terms the production of the books, and not describing him as an official of the corporation, then doubtless the objection that there was no obligation on the part of the corporation to produce the books would take the form of one argument in support of his claim of constitutional privilege against compulsory self-incrimination, and not, as in this part of our brief, the form of an objection independent of that particular constitutional right. But, where the summons is addressed to the corporation itself, then, independently of that constitutional right of the individual custodian, there can be no obligation on him to produce them unless it is first shown that the subpœna imposes an obligation upon the corporation itself to produce them.

(3) The one advantage which the Government sought to secure by choosing a summons addressed to the corporation itself rather than one addressed to the individual custodian illustrates the distinction. For a corporation is not protected by the Fifth Amendment, and a natural person is.

Hale v. *Henkel*, 201 U. S. 43.
The Bornn Hat Co. v. *U. S.*, 223 U. S. 713, affirming 184 Fed. 506.

The Government can hardly expect to obtain all the advantages of both kinds of summons, and none of the disadvantages of either.

C. If it is suggested that no objection was made on the corporation's behalf to the production of the books and papers, the suggestion is either unsound or unwarranted, or both.

(*a*) If, as we are entitled to assume, the corporation did not exist, then it is for that reason that no objec-

tion was made on its behalf, and not because the corporation, expressing its view through some officers or agents other than Wheeler and Shaw (if there were any other officers or agents, which does not appear), was willing to produce the books and papers; and—

(*b*) If the corporation is assumed to have been moribund, but still with sufficient life to enter an objection against a subpœna requiring it to produce books and papers, then the second paragraphs of the letters of Wheeler and Shaw to the grand jury (R. pp. 6, 19) were equivalent to an objection on its behalf. The language is:—

> "Even were the facts not as stated above, I am advised that the language of said subpœna quoted above is so broad, sweeping, and lacking in particularity as to constitute a violation of the rights of *any* party to whom a subpœna is addressed to be exempt from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution."

Besides, if the corporation existed the statements of Wheeler and Shaw to the grand jury, repeated at the hearing and found to be true, that they possessed in their official capacity none of the books and papers described in the subpœna, must be deemed to be equivalent to an objection on the corporation's behalf, Wheeler and Shaw never having resigned their respective offices of treasurer and president (Finding of Fact No. 4, R. pp. 11, 21).

D. If the foregoing considerations are sound, then the orders of commitment and the punishment by imprisonment of the plaintiffs in error and appellants deprived them of their liberty without due process of law.

(*a*) They were adjudged in contempt and committed for "obstructing" and "impeding" "the corporation known as the Wheeler & Shaw, Inc., and de-

scribed in said subpœna, from complying with the said subpœna *duces tecum*" (R. pp. 10, 21).

(*b*) But it needs no argument to show that they could not be guilty of contempt or liable to punishment therefor for preventing a non-existent corporation from doing something which, even had it existed, it would have been under not the slightest legal obligation to do. On the agreed facts the subpœna was void, and the District Court had no jurisdiction to enforce it. The motions to dismiss should have been granted.*

II.

If, as is agreed, the books and papers described in the subpœna were the private property of the plaintiffs in error and appellants, then the Court's order requiring their production before the grand jury, and the judgments of contempt based upon the disobedience of that order, violated the right of each plaintiff in error and appellant under the Fifth Amendment not to be compelled in any criminal case to be a witness against himself, and the right of each under the Fourth Amendment to be exempt from unreasonable searches and seizures.

A. Assuming that the contents of documents would, in fact, tend to criminate an individual, his protection under the Fourth and Fifth Amendments against being compelled to produce them depends wholly upon the capacity in which he holds them, not at all upon their origin or upon the character in other respects of the information contained in them.

(*a*) This proposition is supported by authority, and is not, as the Government's brief seems to imply, a novelty.

Boyd v. *United States*, 116 U. S. 616.

* If material it may be pointed out that the word "petition" in the fifth line of the bill of exceptions as printed (R. p. 11) is an obvious mistake. The word intended was "motion."

The statute of June 22, 1874, under examination in that case, did not contain the word "private." It referred only to "any business book, invoice, or paper *belonging to or under the control of* the defendant or claimant." It was *this Court* that defined such documents as "a man's . . . private papers" within the meaning of the Fourth and Fifth Amendments (p. 630). And this definition was founded on Lord Camden's opinion in

> *Entick* v. *Carrington et als.*, 19 How. State Trials, 1029,

where he said,—

"Papers are the owner's goods and chattels; they are his dearest property."

Ownership and possession were Lord Camden's test of "private" papers.

Can it be seriously suggested that this Court meant to intimate that breaking into a man's house would not be an unreasonable search if the papers sought, though known to be his property, formerly belonged to a corporation? The Boyd case has perhaps been limited in some respects by subsequent decisions, but not on this point.

Wilson v. *United States*, far from rejecting this view, confirms it. On page 376 of the opinion it is said,—

> "But there is no unreasonable search and seizure when a writ, suitably specific and properly limited in its scope, calls for the production of documents which, *as against* their *lawful owner* to whom the writ is directed, the party procuring its issuance is entitled to have produced" (italics ours).

And on page 377:—

> "The copies of letters written by the president of the corporation in the course of its transactions were *as much a part of its documentary property* (italics ours) . . . as its ledgers and minute books."

This was said in discussing the "character" of the books called for. And that is obviously the sense in which the word "character" was used in the subsequent passages of the opinion quoted in the Government's brief.

It is said on page 378,—

> . . . "if they have been held pursuant to the authority of the corporation, that authority is subject to termination."

But no corporation can terminate the authority of a man to hold his own property; certainly not merely because it was once the corporation's property.

Again on page 380 the learned judge says,—

> "The question still remains with respect to the nature of the documents *and the capacity in which they are held*" (italics ours).

And again (p. 384):—

> "The appellant held the corporate books subject to the corporate duty."

And page 386:—

> "Nothing more is demanded than that the appellant should perform the obligations pertaining to his custody, and should produce the books which he holds *in his official capacity* in accordance with the requirements of the subpœna" (italics ours).

This was said in discussing the appellant's claim under the Fifth Amendment. But where the ap-

pellant holds the books not in any official capacity, but in a purely private and personal capacity, something more *is* demanded, and that something more is that he be deprived of his constitutional protection against self-incrimination.

The truth is that the novel view of what are "private" papers is the Government's view, not ours. That the test of "private papers" laid down in *Wilson* v. *United States* and *Boyd* v. *United States* is what we aver was assumed as a matter of course in

> *Hillman* v. *U. S.*, 192 Fed. 264, 270 (C. C. A. 9th Cir.),

in which a petition for *certiorari* was denied by this Court (No. 1020, April 1, 1912); and has never, so far as we know, been questioned in any opinion of this Court or any other court.

And, notwithstanding the Government's attempt (Brief, p. 6) to distinguish

> *In the Matter of Harris*, 221 U. S. 274,

the necessary implications of the opinion in that case are conclusive in our favor.

(*b*) The consequences of adopting as the test of the scope of the individual's constitutional protection against self-incrimination "the nature of the contents of the books and records themselves" (Government's brief, p. 4) are such as to require the rejection of that test, even if the question were *res nova*.

(1) In *Boyd* v. *U. S.*, ubi supra, it is said (p. 630),—

> "In this regard the Fourth and Fifth Amendments run almost into each other."

The extraordinary consequences of applying the Government's test to determine what are unreason-

able searches and seizures under the Fourth Amendment have already been suggested.

(2) Suppose a junk dealer on trial for murder sets up an alibi. In one of the books of a defunct corporation which he has bought appears an entry made while the corporation owned the book, showing a former sale of junk to him and thus proving his presence on a certain day in the town where the crime was committed,—a fact fatal to his alibi. On the Government's theory how could he be protected by the Fifth Amendment (or by the analogue of that amendment in any state constitution) from the compulsory production of that book by subpœna *duces tecum* at his own trial? Will it be said that he would be protected by the Fifth Amendment if the summons were addressed to him in his individual capacity, and by the fact that he was not an officer or agent if it were addressed to the corporation and served on him? That would be to abandon the Government's test, which is "the nature of the contents of the books and records themselves" (Brief, p. 4), the fact that "the books are *and must ever remain the record books of the corporation*" (ib. p. 6).

For on the Government's test any man who has in his possession books containing corporation entries is the corporation's agent to produce them on a subpœna addressed to it. And if "the nature of the contents of the books" is the test, what difference can it make whether the subpœna is addressed directly to the individual who has them or to the corporation and served on him? The capricious frittering away of a vital constitutional right by the Government's test is manifest.

(3) And, again, for what reason other than caprice can the Government's test be restricted to books

showing the transactions of a corporation? Suppose my neighbor's diary shows my crime." If the nature of the contents of the book is the test, then, if I buy his diary, how does the Fifth Amendment protect me from being compelled by subpœna *duces tecum* to produce it in a criminal case against myself?

B. Finally, the lack of reasonable particularity in the description of the books and papers in the subpœna is as valid an objection to the subpœna under the Fourth Amendment when urged by Wheeler and Shaw personally as when urged by the corporation.

(*a*) That the subpœna was unreasonably sweeping, and that this defect was seasonably urged by Wheeler and Shaw on their own behalf, has already been pointed out (*ante*, p. 11).

(*b*) If for this reason the subpœna was void as against the corporation, it could not be valid as against Wheeler or Shaw.

C. The statement on page 6 of the Government's brief, "Any other reasoning would entirely destroy the value of the decision in the Wilson case," seems to require no reply except the obvious one, that the purpose of decisions is not to assist the Government, but to declare the law.

It is respectfully submitted that the Government's motion should be denied.

NATHAN MATTHEWS.

WILLIAM G. THOMPSON,
ROMNEY SPRING,
Of Counsel.

WHEELER *v.* UNITED STATES.

SHAW *v.* UNITED STATES.

WHEELER *v.* MURCHIE, UNITED STATES MARSHAL.

SHAW *v.* SAME.

ERROR TO AND APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

Nos. 658, 659, 660, 661. Submitted December 4, 1912.—Decided January 6, 1913.

An officer of a corporation is not subjected to an unreasonable search or seizure by a subpœna to produce without *ad testificandum* clause the books and papers of that corporation, nor is he subjected to self-incrimination by such subpœna and an order to produce thereunder or deprived of his liberty without due process of law by being committed for contempt for failure to comply with such order. *Wilson* v. *United States*, 221 U. S. 361.

Books of a corporation are not the private books of any of the officers and do not become so by the dissolution of the corporation and the transfer of the books to one of such officers.

THE facts, which involve the validity under the due process and search and seizure provisions of the Constitution of a *subpœna duces tecum* to an officer of a corporation to produce books and papers of the corporation, are stated in the opinion.

Mr. Nathan Matthews, *Mr. William G. Thompson* and *Mr. Romney Spring* for Wheeler and Shaw:

The orders of commitment and the imprisonment thereunder have deprived the plaintiffs in error and appellants of their liberty without due process of law.

The subpœna imposed no legal obligation on the corporation to produce the books and papers.

Even if the corporation had had any sort of existence at the time the subpœna was issued, it would have been under no legal obligation to produce the books and papers therein described.

A natural person who had neither the title nor possession of books and papers could not by any known form of procedure be put under a legal obligation to produce them. *Ballman* v. *United States*, 200 U. S. 186, 194.

The corporation having been lawfully dissolved and its charter annulled had thus ceased to be subject to the State's visitatorial powers and had no longer any special privileges, or franchises, or right to do business as a corporation. *Hale* v. *Henkel*, 201 U. S. 43, 74–75.

If the subpœna imposed no legal obligation upon the corporation to produce any books and papers, it imposed no legal obligation upon Wheeler and Shaw individually to do so.

The only obligation imposed upon Wheeler and Shaw by the serving upon them of a summons addressed to the corporation was an obligation in their official capacity depending wholly upon the existence of an obligation on the part of the corporation itself to produce the books and papers.

The summons ran directly to the corporation, and not to Wheeler and Shaw.

The service made upon Wheeler and Shaw in their official capacity as officers of the corporation was simply a method of enforcing the assumed obligation of the corporation, and not any obligation of theirs personally. *Commissioners* v. *Sellew*, 99 U. S. 624, 627.

The duty imposed upon them by the service was secondary, not primary. In such a case the obligation of the individual served is derivative and secondary, and not individual and primary. *Wilson* v. *United States*, 221 U. S. 361; *Dreier* v. *United States*, 221 U. S. 394; *Consolidated Rendering Co.* v. *Vermont*, 207 U. S. 541; *Balti-*

more & Ohio R. R. v. *Int. Com. Comm.*, 221 U. S. 612, 622. And see *In re American Sugar Refining Co.*, 178 Fed. Rep. 109; *In re Bornn Hat Co.*, 184 Fed. Rep. 506, 508.

Where the summons is addressed to the corporation itself, then, independently of that constitutional right of the individual custodian, there can be no obligation on him to produce them unless it is first shown that the subpœna imposes an obligation upon the corporation itself to produce them.

The one advantage which the Government sought to secure by choosing a summons addressed to the corporation itself rather than one addressed to the individual custodian illustrates the distinction. For a corporation is not protected by the Fifth Amendment, and a natural person is. *Hale* v. *Henkel*, 201 U. S. 43; *The Bornn Hat Co.* v. *United States*, 223 U. S. 713, affirming 184 Fed. Rep. 506.

If the books and papers described in the subpœna were the private property of appellants, the court's order requiring their production before the grand jury, and the judgments of contempt based upon the disobedience of that order, violated their rights under the Fifth Amendment not to be compelled in any criminal case to be a witness against oneself, and under the Fourth Amendment to be exempt from unreasonable searches and seizures. *Boyd* v. *United States*, 116 U. S. 616; *Entick* v. *Carrington*, 19 How. State Trials, 1029; *Hillman* v. *United States*, 192 Fed. Rep. 264, 270; *Matter of Harris*, 221 U. S. 274.

The subpœna was unreasonably sweeping, and this defect was seasonably urged by Wheeler and Shaw on their own behalf.

If for this reason the subpœna was void as against the corporation, it could not be valid as against Wheeler or Shaw.

The Solicitor General and *Mr. Assistant Attorney General Harr* for the United States and the United States Marshal:

The Fifth Amendment has no application because appellants were not called as witnesses.

The immunity granted by the Fifth Amendment that no person "shall be compelled in any criminal case to be a witness against himself," means testimonial compulsion. 3 Wigmore on Evidence, § 2263.

A person who merely produces books and papers does not vouch for their contents, and when, as here, they are the records of a corporation and tell its story, not his, he is not even in effect made a witness against himself by being compelled to produce them.

The order to produce the books of the corporation was not an invasion of appellants' privacy within the meaning of the Fourth Amendment.

The Fourth Amendment, as construed in *Boyd* v. *United States*, 116 U. S. 616, merely protects a person against an invasion of his privacy, when such invasion will operate to incriminate him. But it is no invasion of a man's privacy to compel him to produce the books and papers of a corporation, whose acts, as above stated, are necessarily subject to investigation by the State. *Wilson* v. *United States*, 221 U. S. 374.

While the corporation may be dissolved, its records are still subject to examination for any purpose connected with the winding up of its affairs (Law of Massachusetts, 1903, chap. 437, § 52); and see the act of March 25, 1912, chap. 313, pp. 210, 232.

The possession of legal title to the corporate books and papers by appellants does not affect the character of those documents. They are none the less the records of the corporation because the legal title thereto has passed to Wheeler and Shaw as individuals. *In re Grant*, 198 Fed. Rep. 708.

Legal title is immaterial upon a subpœna to produce books or papers, because the court is entitled to them as against anyone for the time being, and the proceeding is not one to try title. The person subpœnaed cannot refuse to produce the papers sought if he has not title, and if he has title as well as possession, he is the better able to respond to the subpœna.

The rule, both at law and in equity, that a person cannot be compelled to produce books and papers to discover matters which may incriminate him, is subject to the qualification here contended for. See § 724, Rev. Stat.

The rule in equity that no man need discover matters tending to criminate himself, or to expose him to a penalty or forfeiture, is subject to an exception in respect to frauds and also where fiduciary relations exist. Adams' Equity, 8th ed., p. 4; *State* v. *Maury*, 2 Del. Ch. Rep. 141, 158; *Green* v. *Weaver*, 1 Sim. Rep. 404.

Sound public policy forbids the extension of the privilege against self-incrimination to a case involving the production of corporate records. 3 Wigmore, § 2251, p. 3102.

MR. JUSTICE DAY delivered the opinion of the court.

These cases arise from the following facts: On April 12, 1912, the Federal grand jury in Boston was investigating whether Warren B. Wheeler and Stillman Shaw, plaintiffs in error in Nos. 658 and 659 and appellants in Nos. 660 and 661, had, by means of a certain corporation known as Wheeler & Shaw, Incorporated, or otherwise, violated § 215 of the act of Congress of March 4, 1909, 35 Stat. 1088, 1130, c. 321, making it a crime to use the mails of the United States for a scheme to defraud, which crime is punishable by fine or imprisonment or both. On the same day a *subpœna duces tecum*, without *ad testificandum* clause, was issued, summoning the corporation to appear

before the grand jury and produce all the cash books, ledgers, journals and other books of account of the company, and all copies of letters and telegrams of Wheeler & Shaw, Incorporated, whether signed or purporting to be signed by the corporation or by its president or treasurer in its behalf, for and covering the period from October 1, 1909, to January 1, 1911; all the aforesaid books and copies of letters and telegrams to be produced before the grand jurors under the penalties of law. The subpœna was served on Wheeler as treasurer, and on Shaw as president, of the corporation. They appeared before the grand jury, without any of the books or correspondence, as required in the subpœna, however; asked to be sworn for the purpose of explaining why they had not brought them, and left with the grand jurors papers containing the following statement of their reasons for the non-production of the books, etc. (the records are the same, *mutatis mutandis*, in the Wheeler case and the Shaw case):

"To the Grand Jurors of the District Court of the United States for the District of Massachusetts.

"Gentlemen: There was served upon me at 12:50 P. M. to-day, April 12, 1912, a subpœna addressed to Wheeler & Shaw, Inc., a corporation doing business at Boston, in said District, and calling upon that corporation to produce before you, presumably through me, 'all cash books, ledgers, journals, and other books of account of said Wheeler & Shaw, Inc., for and covering the period between October 1, 1909, and January 1, 1911, all copies of letters and telegrams of Wheeler & Shaw, Inc., signed or purporting to be signed by said Wheeler & Shaw, Inc., or by its president or its treasurer in behalf of said Wheeler & Shaw, Inc., during the months of October, November and December, 1909, and the entire year of 1910; all the aforesaid books, copies of letters, and telegrams to be produced

before the Grand Jurors of said District Court in the matter of an alleged violation of the laws of the United States by Warren B. Wheeler and Stillman Shaw.'

"I desire to avail myself of what I understand to be my right to state to you under oath my reasons for not producing any books, ledgers, or other papers or documents in response to said summons. My reasons are:

"First: That I have not in my possession or custody any cash books, ledgers, journals, or any of the other books or things described in said subpœna which belong to Wheeler & Shaw, Inc., or are in my possession as an officer or agent of Wheeler & Shaw, Inc. The only cash books, ledgers, journals, and other books, papers, and things to which the aforesaid description in said subpœna could apply are the personal property of myself and Stillman Shaw, and are in our personal possession, and are not in the possession of either of us as officers or agents of any corporation.

"Second: Even were the fact not as stated above, I am advised that the language of said subpœna quoted above is so broad, sweeping, and lacking in particularity as to constitute a violation of the rights of any party to whom a subpœna is addressed to be exempt from unreasonable searches and seizures under the Fourth Amendment to the United States Constitution.

"Third: Whether addressed to said corporation or to me personally, I am advised that said subpœna violates the rights secured to me by the Fifth Amendment to the Constitution of the United States not *to* be a witness against myself in any criminal case.

"I make this statement in good faith, and not intending any disrespect to the Grand Jury, or to the officers of the Government, and I venture to remind the Grand Jury that I am entitled under the laws of the United States not to have any inferences drawn against me by reason of the action I have taken in this matter. It is one thing to pro-

duce private books and papers in a proceeding where there is an opportunity to explain them and to examine and cross-examine witnesses concerning them; but the situation in an *ex parte* proceeding is so different that I feel sure the Grand Jury will feel that I am justified in standing upon my constitutional rights in this matter.

"WARREN B. WHEELER."

The grand jurors on April 13, 1912, filed in the District Court a paper called a petition for attachment for contempt, in which they prayed that Wheeler and Shaw be ordered to produce the books and copies of letters and telegrams, and upon failure or refusal be adjudged guilty of contempt. Wheeler and Shaw appeared, filed motions to dismiss, which were denied, and then filed sworn answers. The cases were heard by the district judge on the grand jurors' petitions, the answers and certain agreed facts. At the close of the hearing the court ruled that the case was governed by *Wilson* v. *United States*, 221 U. S. 361, and ordered Wheeler and Shaw to produce the books and papers described in the subpœna. Final orders were entered on April 18, 1912, adjudging them in contempt and committing them to the custody of the marshal until, by producing before the grand jury the books and copies of letters and telegrams they should cease to obstruct and impede the corporation known as Wheeler & Shaw, Incorporated, from complying with the *subpœna duces tecum* or otherwise purge themselves of their contempt.

From these judgments Wheeler and Shaw sued out writs of error, which constitute cases Nos. 658 and 659. They also filed petitions for writs of *habeas corpus* against the marshal, and from the orders denying the petitions they appealed to this court, and these cases constitute Nos. 660 and 661.

Upon the hearing the district judge made certain findings of fact, as follows:

"1. A subpœna, of which a copy with a copy of the officer's return thereon is annexed to said petition, was served upon the defendant on the twelfth day of April, A. D. 1912.

"2. The corporation mentioned in the statute of the Commonwealth of Massachusetts which took effect on March 25, 1912, being Statute 1912, Chapter 313, and therein described by the words 'Wheeler and Shaw, Inc.,' is the same corporation that is mentioned in said subpœna. [By the statute the corporation was dissolved and its charter annulled.]

"3. On the afternoon of said April 12th the defendant appeared before said Grand Jury in response to said subpœna, and thereupon the questions, of which a copy is annexed to said petition, were put to him, and answers, as stated in the copy of the same annexed to said petition, were made by him, and the written statement, of which a copy is annexed to said petition, was left by him with said Grand Jury. The defendant did not bring with him or have before said Grand Jury any of the books and copies of letters and telegrams described in said subpœna. He did, when before said Grand Jury, ask to be sworn for the purpose of stating the reasons why he had not brought with him any of said books and copies of letters and telegrams; but he was not sworn. He did not waive or intend to waive his claim of a right to be sworn before said Grand Jury for the purpose aforesaid.

"4. Some time in the month of April, 1911, said corporation Wheeler & Shaw, Inc., ceased to do business, and shortly afterwards the legal title and possession of all the books and papers of said corporation then belonging to it, including all the books and copies of letters and telegrams described in the subpœna, were lawfully transferred to the defendant and to one Stillman Shaw as tenants in common, and have ever since remained in the defendant and said Shaw. Prior to the time when said statute of

1912, Chap. 313 [dissolving the corporation], took effect, the defendant was the treasurer of said corporation, and said Shaw was the president thereof, and neither the defendant nor said Shaw has ever resigned his said office in said corporation."

Wheeler and Shaw also took bills of exceptions, in which it appears that the cases were heard upon the petitions, sworn answers and certain facts admitted by counsel in open court, which are set out and incorporated in the finding of fact appearing of record, and in which it is further made to appear that defendants at the hearing before the court repeated the claim set up by them before the grand jury that a compliance with the *subpœna duces tecum* would violate their right to be secure against unreasonable searches and seizures under the Fourth Amendment of the United States Constitution, and their right not to be compelled to be witnesses against themselves in any criminal case under the protection of the Fifth Amendment. They also asked the court to rule that such order would violate their rights under the Massachusetts constitution. The court overruled all of the objections of defendants and held, as a matter of law, that the legal effect of dissolving the corporation and transferring to the defendants the books and copies of letters and telegrams described in the subpœna had not been to make the books and papers the private property of the defendants in such sense as to exempt them from producing such books and correspondence before the grand jury, as required by the subpœna, and that the facts of the cases brought them within the rule of this court in *Wilson* v. *United States, supra.*

The defendants reduce their contentions in this court to two propositions, namely:

"I. The orders of commitment and the imprisonment thereunder have deprived the plaintiffs in error and appellants [referred to in this opinion as defendants] of their liberty without due process of law.

"II. If, as is agreed, the books and papers described in the subpœna were the private property of the plaintiffs in error and appellants, then the court's order requiring their production before the grand jury, and the judgments of contempt based upon the disobedience of that order, violated the right of each plaintiff in error and appellant under the Fifth Amendment not to be compelled in any criminal case to be a witness against himself, and the right of each under the Fourth Amendment to be exempt from unreasonable searches and seizures."

The proposition that the orders of the court of commitment and imprisonment deprived defendants of their liberty without due process of law seems to be based upon the contention that the corporation was in no way obliged to obey the subpœna, and that, after its dissolution, it was not subject to any subpœna requiring the production of books and papers before the grand jury. But we do not think there is any merit in this objection. If the Government had the legal right to demand the production of the books and papers in question, with a view to the investigation of the alleged offense of Wheeler and Shaw in the proceedings before the grand jury, whether the subpœna was drawn in proper form or not or whether the corporation, in view of its dissolution, could have been compelled to comply with its requirements, in the attitude which the case has taken, is immaterial. It is apparent from the facts already recited that Wheeler and Shaw were required by the *subpœna duces tecum* to bring before the grand jury the books and papers of the corporation which had been dissolved and that they so understood the subpœna; that they were in possession of such books and papers which could be by them produced before the grand jury, and that before the order of commitment was made the defendants were allowed a full hearing in a court of competent jurisdiction. No objection was taken to the technical form of the subpœna in directing it to

the corporation and not the individuals. There is nothing to show it was so broad as to be objectionable, as was indicated of the subpœna in *Hale* v. *Henkel*, 201 U. S. 43. The defendants, in possession of the books and papers, were denying the right of the court to compel their production because of the dissolution of the corporation; because the title and possession of the books and papers had passed to the defendants individually and were their private property as tenants in common, and they had no possession or custody of the documents as officers of the corporation, and because, as against them, the compulsory production of such books and correspondence would violate their rights under the Fourth and Fifth Amendments to the Constitution of the United States.

We think the questions of substance now presented are whether the rights of the defendants as individuals to be exempt from unreasonable search and seizure of their property and from being compelled to be witnesses against themselves would be violated by the compulsory production of the documents in question.

We are of opinion that this case is virtually ruled by *Wilson* v. *United States*, *supra*. In that case it was held that there was no unreasonable search or seizure where the officer of a corporation, whose guilt of an offense against the laws of the United States was under investigation, was compelled to produce books and papers of the corporation of which he was president, because as against the corporation, the true owner of the books and papers, their production might lawfully be compelled, and that there was no self-incrimination of such officer, because he was not compelled to produce his private books, but the books of the corporation, which were not within the protection given to the private books and papers of an individual. We are unable to see that this case differs in principle from that one. It is true the corporation in the present case had ceased to exist, but

its books and papers were still in existence and were still impressed with the incidents attending corporate documents. Wheeler and Shaw had been officers of the corporation and the books of the company had before the dissolution been made over to them; but this did not change the essential character of the books and papers or make them any more privileged in the investigation of crime than they were before.

Wheeler and Shaw, it may be admitted, could no longer be officers of the corporation, although the record shows that they had never resigned their positions. The corporation, however, had gone out of existence, leaving its books and papers in the possession of the defendants, and, it may be conceded, for many purposes such books belonged to them, but, as was held in the *Wilson Case*, the privilege of the Constitution against unreasonable searches and seizure does not protect against the lawful examination in due course of books of this character; nor does the privilege of individuals against self-incrimination in the production of their own books and papers prevent the compulsory production of the books of a corporation with which they happen to be or have been associated. It was the character of the books and papers as corporate records and documents which justified the court in ordering their production, as this court ruled in the *Wilson Case*. We think the character of the books was not changed for this purpose, because the corporation had gone out of existence after making over the books to the defendants. Such books and papers still remained subject to inspection and investigation, and no constitutional right of the defendants was violated when, being found in possession of the documents, they were required to produce them for inspection by the grand jury. It follows that the judgments of commitment in Nos. 658 and 659 and the orders appealed from in Nos. 660 and 661 should be

affirmed.